***United States Court of Appeals***

***for the Second Circuit***

# JOINT APPENDIX

# 76-7317

ORIGINAL

In The

## United States Court of Appeals

For The Second Circuit

GEORGE STROGANOFF-SCHERBATOFF,
*Plaintiff-Appellant,*

-against-

HENRY H. WELDON,
*Defendant-Appellee.*

GEORGE STROGANOFF-SCHERBATOFF,
*Plaintiff-Appellant,*

-against-

CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN,
*Defendants-Appellees.*

(Continued on Reverse)

## JOINT APPENDIX

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(10057)

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UNITED STATES COURT OF APPEALS
FILED
OCT 21 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

GEORGE STROGANOFF-SCHERBATOFF,
*Plaintiff-Appellant,*

-against-

METROPOLITAN MUSEUM OF ART,
*Defendant-Appellee.*

*On Appeal from the United States District Court for the Southern District of New York.*

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES RE: STROGANOFF-SCHERBATOFF v. WELDON

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE BONSAL

Jury demand date:

74 civ. 626

Form No. 106 Rev.

| TITLE OF CASE | ATTORNEYS |
|---|---|
| GEORGE STROGONOFF-SCHERBATOFF, | For plaintiff: Lyman Stansky 667 Madison Ave., NYC-10021-Pl. 3 |
| -against- | |
| HENRY H. WELDON | |
| 08-08-75 | For defendant: Thal & Youtt ~~666 Fifth Avenue New York, N.Y. 10010 586-3722~~ 919 3rd Ave. NY, NY10022 751-3300 |

6/28

UNITED STATES COURT OF APPEALS
FILED
JUL 20 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

| STATISTICAL RECORD | COSTS | | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|---|---|---|---|---|---|---|
| J.S. 5 mailed | Clerk | | 2/6/74 | L. Stanley | 15 — | 15 |
| | | | 2/6/74 | U Stan | — | |
| J.S. 6 mailed 06-01-76 | Marshal | | | | | |
| Basis of Action: Conversion $50,000.00 | Docket fee | | | | | |
| | Witness fees | | | | | |
| Action arose at: | Depositions | | | | | |

BEST COPY AVAILABLE

74 CIV.

| DATE | PROCEEDINGS |
|---|---|
| 2-6-74 | Filed complaint and issued summons. |
| 2-22-74 | Filed summons with marshals return: Served: Henry H. Weldon personally on 2-25-74. |
| 3-11-74 | PRE-TRIAL CONFERENCE HELD BEFORE BONSAL,J. |
| 3-24-74 | Filed ANSWER to complaint. |
| 3-24-74 | Filed deft's notice to take deposition of pltff. |
| 2-21-75 | Filed deft's affidavit & notice of motion for summary judgment ret. 3-10-75. (Statement pursuant to rule 9(g) attached.) |
| 2-[illegible]0-75 | Filed pltff's interrogs & requests for production of documents. |
| [illegible]-[illegible]-75 | Filed Reply Memorandum of Deft. |
| 3-08-75 | Filed notice of change of address of defts atty. |
| 3-[illegible]-75 | Filed Memorandum to Counsel: Before deciding deft's motion for summary judgment, the court would like to give the parites an opportunity to submit further briefs. Please file your briefs by 10-15-75. Bonsal,J. m/n |
| 9-[illegible]-75 | Filed pltff's supplementary memorandum. |
| 10-15-75 | Filed deft's supplemental memorandum of law in support of motion for summary judgment. |
| 5-18-76 | Filed Memorandum #44431: Deft's motions for summary judgment are granted. So ordered. Bonsal,J. m/n |
| 6-01-76 | Filed JUDGMENT, Ordered that deft. Henry H. Weldon have judgment against pltff. dismissing the complaint. Judgment Ent. Clerk. m/n Ent. 06-03-76. |
| 6-28-76 | Filed pltff's notice of appeal to the USCA from judgment entered 6-01-76. Mailed Copy to Thal & Youtt. |

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By E. Thompson
Deputy Clerk

DOCKET ENTRIES RE: STROGANOFF-SCHERBATOFF v. WRIGHTSMAN 3a

[1]

UNITED STATES DISTRICT COURT

Jury demand date: 74 Civ 3750

D. C. Form No. 106 Rev.

-75 Action consolidated with 75 Civ 3174 for all purposes. Lasker, J. & Bonsal, J.

| TITLE OF CASE | ATTORNEYS |
|---|---|
| GEORGE STROGANOFF-SCHERBATOFF<br>VS<br>CHARLES B. WRIGHTSMAN and<br>WAYNE WRIGHTSMAN | For plaintiff:<br>LYMAN STANSKY 667 Madison Ave.<br>NYC 10021 753-9755<br><br>For defendant:<br>Davis Polk & Wardwell<br>1 Chase Manhattan Plaza<br>New York, N.Y. 10005<br>tele: Ha 2-3400 |

10/28

UNITED STATES COURT OF APPEALS
FILED
MAR 15 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

| STATISTICAL RECORD | COSTS | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|---|---|---|---|---|---|
| J. S. 5 mailed X | Clerk | 1/2/74<br>1/7/74 | Hand<br>11843 | 15 | |
| J. S. 6 mailed 06-01-76 | Marshal | | | | 15 |
| Basis of Action: | Docket fee | | | | |
| | Witness fees | | | | |
| Action arose at: | Depositions | | | | |

Docket Entries Re: Stroganoff-Scherbatoff v. Wrightsman

4a
[2]

STROGANOFF-SCHERBATOFF VS CHARLES B. WRIGHTSMAN et ano

| DATE | PROCEEDINGS | Date Order Judgment N |
|---|---|---|
| [illegible]-74 | Filed complaint and issued summons. | |
| [illegible]-75 | Filed summons with marshals return: Served. | |
| | Jayne Wrightsman by Doorman on 3-20-75. | |
| | Charles B. Wrightsman by Doorman on 3-20-75. | |
| 4-29-75 | Filed ANSWER of Charles B. Wrightsman and Jayne Wrightsman to the complaint. | DP&J |
| 5-30-75 | Filed defts. C & J Wrightsman's first set of interrogs. to pltff. | |
| [illegible]-75 | PRE-TRIAL CONFERENCE HELD BY Judge Bonsal | |
| 9-09-75 | Filed pltff's affidavit & notice of motion to consolidate this actior with 75 Civ [illegible]74,ret.9-19-75. | |
| 9-01-75 | Filed Memo-endorsed on pltff's motion filed 9-9-75 to consolidate action with 75 Civ 3174 with Lasker,J.; Motion granted. So ordered. Lasker,J. & Bonsal,J. | |
| 9-20-75 | Filed deft's affidavit & notice of motion for summary judgment ret. 11-17-75.(Statement pursuant to rule 9(g),enclosed.) | |
| [illegible]0-75 | Filed deft's memorandum of law in support of their motion ret.11-17-75 | |
| [illegible]-75 | Filed stip & order that deft's motion for summary judgment is adj. from 11-17-75 to 12-8-75. Bonsal,J. | |
| [illegible]75 | Filed pltff's memorandum of law in opposition to deft's motion for summary judgment. | |
| [illegible]-75 | Filed pltff's affidavit in opposition to deft's motion for summary judgment. | |
| [illegible]75 | Filed supplemental affidavit of J.Wille Re: translation. | |
| 12-03-75 | Filed deft's reply memorandum of law submitted in support of their motion for summary judgment. | |
| 12-08-75 | PRE-TRIAL CONFERENCE HELD BY - Bonsal J. | |
| 12-19-75 | Filed Sur-Reply affidavit by Lyman Stansky Re: deft's proof. | |
| 2-10-76 | Filed affidavit of C.B.Wrightsman Re: the purchase of the bust of Diderot. | |
| 2-12-76 | Filed affidavit of service by Walter Lucas of affidavit of Charles B.Wrightsman on 2-10-76. | |
| 3-24-76 | Filed transcript of record of proceedings dated 12-8-75. | |
| 5-18-76 | Filed Memorandum #44431: Deft's motions for summary judgment are granted. So ordered. Bonsal,J. m/n (Filed under 74 C.626) | |
| 6-01-76 | Filed JUDGMENT: Ordered that deft's have judgment against the pltff George S.Scherbatoff dismissing the complaint. Judgment Ent. Clerk. Ent.06-03-76. m/n (Judgment filed under 74 Civ. 626) | |
| 6-28-76 | Filed pltff's notice of appeal to the USCA from judgment entered on 6-01-76. Mailed copy to Davis,Polk & Wardwell. | |

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature] Deputy Clerk

DOCKET ENTRIES RE: STROGANOFF-SCHERBATOFF v. METROPOLITAN MUSEUM OF ART

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | 0049 | | 75 3171 |

JUDGE BONSAL

| PLAINTIFFS | DEFENDANTS |
|---|---|
| STROGANOFF-SCHERBATOFF, GEORGE | METROPOLITAN MUSEUM OF ART |

6/28

(10-01-75-This action consolidated with 74 Civ 5750 for all purposes, Bonsal & Lasker, J.

CAUSE

Deft. wrongfully took Pltff's property and converted the same to their own use and benefit.

ATTORNEYS

LYMAN STANSKY
667 Madison ave.
New York, N.Y. 10021
753-9755

Lord Day & Lord
25 B'way, NYC 10004
344-8480

UNITED STATES COURT OF APPEALS
FILED
JUL 15 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

76-7317

| | FILING FEES PAID | | STATISTICAL CARDS |
|---|---|---|---|
| | DATE | RECEIPT NUMBER | CD NUMBER |
| CASE WAS FILED IN OTHER DISTRICT AUPERIS | JUN 30 1975 | 59997 | CARD / DATE MAILED<br>JS-5 X<br>JS-6 06-01-76 |

| | | PROCEEDINGS |
|---|---|---|
| 6-30-75 | 1 | Filed complt. and issued summons. |
| 8-1-75 | 2 | Filed Summons with Mars al's Return. Served: Metropolitan Museum of Art..... by. T. Bardel on 7-24-75. |
| 8-13-75 | 3 | Filed ANSWER to complt.. |
| 9-9-75 | 4 | Filed Pltff's Notice of Motion for referral and consolidation of this Case with Judge Bonsal's 74 5750.....ret9-19-75 at 9:30Am Rm 2903 (also dktd in 75-5750) |
| 9-1-75 | 5 | Filed Memo End on back of motion fld 9-9-75....Motion Granted. It is so Ordered ...Lasker, J. & Bonsal, J. mn |
| 0-01-75--- | | ACTION REASSIGNED TO BONSAL, J. M/N |
| 5-18-76=== | | Filed Memorandum #44431: Deft's motions for summary judgment are granted. So ordered. Bonsal,J. m/n (filed under 74 C. 626) |
| 6-01-76=== | | Filed JUDGMENT: Ordered that deft. have judgment against pltff. dismissing the complaint. JUDGMENT Ent. Clerk. m/n Ent.6-03-76. (Judgment filed under 74 Civ 626) |
| 6-28-76 | (6) | Filed pltff's notice of appeal to the U.S.C.A. from the judgment ent. 6-01-76. Mailed notice to Lord,Day & Lord. |

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature] Deputy Clerk

COMPLAINT AGAINST DEFENDANT WELDON



UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - - - - - - - - - - - - - - - - - - - X

GEORGE STROGANOFF-SCHERBATOFF,

Plaintiff,

--against--

HENRY H. WELDON,

Defendant.

- - - - - - - - - - - - - - - - - - - - - - X

Plaintiff, complaining of defendant, by LYMAN STANSKY, his attorney, alleges that:

1. Plaintiff is a citizen of the State of Connecticut.

2. On information and belief, defendant is a citizen of the State of New York.

3. The matter in controversy exceeds, exclusive of interest andcosts, the sum of $10,000

4. On or about December 21, 1973, defendant converted to his own use a painting known as Portrait of Antoine Triest, Bishop of Ghent, by Sir Anthony Van Dyck, of the value of $50,000, the property of plaintiff.

WHEREFORE, plaintiff demands judgment against defend-

ant in the sum of $50,000, interest and costs.

LYMAN STANSKY
Attorney for Plaintiff
Office and Post Office Address:
667 Madison Avenue,
New York, N.Y. 10021

COMPLAINT AGAINST DEFENDANTS WRIGHTSMAN (pp.9a-11a) 9a [1]

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - - - - - - - - - - - - - - - - - - - X

GEORGE STROGANOFF-SCHERBATOFF,

Plaintiff,

--against--

CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - X

Plaintiff, complaining of defendants, by LYMAN STANSKY, his attorney, alleges that:

1. Plaintiff is a citizen of the State of Connecticut.

2. On information and belief, defendants are citizens of the State of New York, or the State of Florida.

3. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.

4. At all the times herein mentioned plaintiff was entitled to the immediate possession of the bust of Diderot by Houdon, described in Catalogue 2043 of Rudolph Lepke's Kunst-Auctions-Hause, No. 225.

5. Prior to November 21, 1974, persons unknown to

plaintiff wrongfully and unlawfully took said property from the possession of the plaintiff and converted the same to their own use and benefit.

6. Prior to November 21, 1974, said personal property of plaintiff came into the possession of the defendants.

7. On or about November 21, 1974 plaintiff duly demanded of defendants, then in possession of said property of the value of $350,000., that they return the same to the plaintiff, but defendants refused to do so and converted said property to their own use and benefit.

8. At no time has any compensation been paid for said bust by anyone to, nor has any compensation therefor been received from, any source whatsoever by, plaintiff or by anyone on his behalf.

9. At the time of said demand and at the commencement of this action plaintiff was and still is entitled to the immediate possession of said bust.

WHEREFORE, plaintiff demands judgment against defendants for the possession ofsaid bust or the sumof Three Hundred and

Fifty Thousand ($350,000.) Dollars, with interest thereon from November 21, 1974, in the event possession thereof cannot be given to plaintiff, together with the costs of this action.

LYMAN STANSKY,
Attorney for Plaintiff,
#667 Madison Avenue,
New York, N.Y. 10021

COMPLAINT AGAINST DEFENDANT METROPLITAN MUSEUM OF ART [1]

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - - - - - - - - - - - - - - - - - - - X

GEORGE STROGANOFF-SCHERBATOFF,
Plaintiff,

--against--

METROPOLITAN MUSEUM OF ART,
Defendant.

- - - - - - - - - - - - - - - - - - - - - - X

Plaintiff, complaining of defendant, by LYMAN STANSKY, his attorney, alleges that:

1. Plaintiff is a citizen of the State of Connecticut.

2. Defendant is a corporation organized under the laws of the State of New York.

3. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.00.

4. On or about August 28, 1974, defendant converted to its own use a marble bust of Voltaire by Jean Antoine Houdon, of the value of $250,000.00, the property of plaintiff.

WHEREFORE, plaintiff demands judgment against defend-

ant in the sum of $250,000.00, with interest and costs.

LYMAN STANSKY,
Attorney for Plaintiff,
#667 Madison Avenue,
New York, N.Y. 10021

ANSWER OF DEFENDANT WELDON



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - X

GEORGE STROGANOFF-SCHERBATOFF,

Plaintiff,

--against--

HENRY H. WELDON,

Defendant.

- - - - - - - - - - - - - - - - - - - - - X

Defendant, by and through his attorneys, Thal & Youtt, for his answer to the complaint herein, states as follows:

1. States that he is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 1 of the complaint.

2. Admits the allegations contained in Paragraphs 2 and 3 of the complaint.

3. Denies the allegations contained in Paragraph 4 of the complaint.

FIRST AFFIRMATIVE
DEFENSE

4. The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE
DEFENSE

5. The complaint is barred by the provisions of

Section 214 of the Civil Practice Law and Rules of the State of New York, the applicable statute of limitations, as having been untimely commenced.

WHEREFORE, defendant demands judgment in his favor, dismissing the complaint, together with the costs of this action.

Dated: New York, New York
December 20, 1974

THAL & YOUTT

By: HARRY E. YOUTT
A member of the firm
Attorneys for Defendant
666 Fifth Avenue
New York, New York 10019
212, 586-3722

TO: LYMAN STANSKY, ESQ.
Attorney for Plaintiff
667 Madison Avenue
New York, New York 10021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OFNEW YORK
- - - - - - - - - - - - - - - - - - - - - - X
GEORGE STROGANOFF-SCHERBATOFF,
Plaintiff,
--against--
CHARLES B. WRIGHTSMAN and
JAYNE WRIGHTSMAN,
Defendants.
- - - - - - - - - - - - - - - - - - - - - - X

Defendants, Charles B. Wrightsman and Jayne Wrightsman, by their attorneys Davis Polk & Wardwell, for their answer to the complaint herein:

1. Are without knowledge or information sufficient to form a belief as to the truth of Paragraph 1.

2. Admit that defendants are citizens of the State of Florida.

3. Deny Paragraph 3.

4. Deny Paragraph 4.

5. Deny Paragraph 5.

6. Deny Paragraph 6.

7. Deny Paragraph 7, except admit that plaintiff's counsel purported to demand the return of a bust of Diderot by the

sculptor Houdon by means of a letter dated November 21, 1974.

8. Admit that defendants have not made any payment to plaintiff in connection with said bust of Diderot and specifically deny that plaintiff is entitled to any such payment or compensation from defendants, or either of them.

9. Deny Paragraph 9.

AS A FIRST AFFIRMATIVE DEFENSE

10. This Court lacks jurisdiction over the defendants.

AS A SECOND AFFIRMATIVE DEFENSE

11. This action is barred by the applicable statute of limitations.

AS A THIRD AFFIRMATIVE DEFENSE

12. The venue is not properly founded in this District.

AS A FOURTH AFFIRMATIVE DEFENSE

13. The complaint fails to state a claim upon which relief may be granted in that it seeks to question the

validity of actions and conduct of the government of the Union of Soviet Socialist Republics. Pursuant to the Act of State Doctrine, the legality of such conduct cannot be inquired into by this Court.

WHEREFORE, the defendants demand judgment dismissing the complaint with prejudice and awarding the defendants their costs.

Dated: New York, New York
April 28, 1975

DAVIS POLK & WARDWELL

By MICHAEL W. LEVINE
A Member of the Firm

Attorneys for Defendants
1 Chase Manhattan Plaza
New York, New York 10005
Telephone: (212) 422-3400

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - - - X
GEORGE STROGANOFF-SCHERBATOFF,
Plaintiff,
--against--
METROPOLITAN MUSEUM OF ART,
Defendant.
- - - - - - - - - - - - - - - - - - - - - X

Defendant, the Metropolitan Museum of Art, by its attorneys, Lord, Day & Lord, answering the complaint herein respectfully alleges:

FIRST: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "1", "3" and "8" of the complaint.

SECOND: Denies each and every allegation contained in paragraphs "4", "5", "6", "7", and "9" of the complaint.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

THIRD: The complaint herein fails to set forth a claim upon which relief can be granted.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

fourth; Plaintiff's claim is barred by the applicable

statutes of limitations.

WHEREFORE, defendant demands judgment dismissing the complaint herein with costs.

LORD, DAY & LORD

By REIGH F. KLANN
A Member of the Firm
Attorneys for Defendant
25 Brozdway
New York, NY 10004
(212) 344-8480

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - - - - - - - - - - - - - - - - - - - X

GEORGE STROGANOFF-SCHERBATOFF,

Plaintiff,

--against--

HENRY H. WELDON,

Defendant.

74 CIV. 626

Assigned to JUDGE DUDLEY B. BONSAL

AFFIDAVIT IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

- - - - - - - - - - - - - - - - - - - - - - X

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

GEORGE STROGANOFF-SCHERBATOFF, being duly sworn, deposes and says, I am the plaintiff and submit this affidavit in opposition to defendant's motion for summary judgment.

I am suing for the conversion by defendant of the painting by Anthony Van Dyck "Bishop of Trieste". For the purposes of this application, defendant does not question my ownership of the Stroganoff Collection (page 3, ¶6, Youtt affidavit, February 19, 1975). Defendant seeks dismissal on the ground that this painting was not part of the Stroganoff Collection. It is catalogued as part of that collection (#80).

Defendant concedes under oath that he had

bought it from Brod who had bought it from Sabin who had been the successful bidder for it at the auction of the very same Stroganoff Collection in 1931 (Weldon affidavit, February 7, 1975, page 1, ¶3). His lawyer confirms this in ¶3 of his Rule 9(g) statement.

Defendant bases the motion primarily on the ground that the printed "provenance" in the catalogue, gives sources or former owners or possessor other than Stroganoff for the painting. However, as hereinafter noted, in 1966, when the subject painting and others were catalogued for exhibition as "The Weldon Collection", the cataloguer listed Stroganoff as the last owner before sale at the 1931 auction.

It is my impression that Mr. Youtt's speculation of the genesis of an auction catalogue, is an insufficient basis for this application. I am no expert, only a member of a family that has been identified with the acquisition of art works for many generations, and a rather modest collector, but I have some familiarity with the process. The cataloguer gets together all available notes, labels, gossip, and bits and pieces here and there, that he may find in pamphlets, magazines, etc., all calculated to enhance the importance of the described objects, where it came from, prior "important" owners, etc. The result

is known as "provenance" or "provenience", defined broadly as "origin or source". My mother, who claimed ownership and protested the sale in 1931, had no part in the composition of the catalogue. Her advice and cooperation were not requested by the consignor, the USSR.

The Stroganoff Collection sold at auction in Berlin in 1931, had been started by my great-great-grandfather, Count Alexander Sergevitch Stroganoff (1730-1811). He was the first President of the Academy of Arts of Russia. In 1764, he acquired the Pierre Crozat Collection in Paris and made it part of his own collection. Over the years, many objects belonging to the Stroganoff Collection were loaned and displayed at Russian museums, which naturally catalogued them as being at the museum.

On page 3, ¶8 of his affidavit, the defendant claims that David Giles Carter is a "recognized authority and scholar of the Dutch and Flemish 17th Century school". In 1964, he authored the catalogue Art of the Rhode Island School of Design in which he described the subject painting as follows:

> "Collections: Bishop Antoine Triest, 1627-1628; Pierre Crozat, Paris to 1741; Korsakoff; The Russian State Hermitage, Leningrad, 1822-1931; Frank T. Sabin, London, 1931-1960; Alfred Brod Gallery, Ltd., London, 1960-63" (emphasis supplied).

In 1966, Robert L. Manning, Director and Curator of the Finch College Museum of Art on East 78th Street

prepared a catalogue of defendant's collection. The subject painting was reproduced in black and white as the frontispiece and was described therein by Mr. Manning as follows:

> "Collections, Bishop Antoine Triest, 1627-1628; Pierre Crozat, Paris to 1741; Korsakoff; The Russian State Hermitage, Leningrad, 1822-1931, Count Sergei Stroganoff, Leningrad, 1931; Frank T. Sabin, London, 1931-1960; Alfred Brod Gallery, Ltd., London, 1960-1963." (emphasis supplied).

As hereinafter noted, Mr. Manning now claims that he was in error when he listed Stroganoff as owner. The compiler of the Lepke catalogue is not available. He had included the subject painting in the "Stroganoff Collection". Was that that worthy's error?

While necessarily basing his claim to ownership on the 1931 auction of that very collection, defendant now takes the position that the painting was not part of the Stroganoff Collection. He himself sponsored and publicized the statements of persons for whose expertise he vouches, that the painting came from the Crozat Collection and that in 1931 it was owned by Count Serge Stroganoff, my mother's brother. On his death in 1923, my mother became the owner of the painting until her death in 1944. It was she who vigorously objected to the 1931 auction in Germany.

According to Art News, May 23, 1931:

"As a prelude to the sale Princess Scherbatoff-Stroganoff of Paris wrote a letter to the Lepke firm protesting against the auction of the St. Petersburg collection, as it is called. "'This collection remains entirely my property,' the Princess wrote indignantly. 'The Soviet republic has taken possession of this collection in a way that sets at defiance every principle of international law.'
"She threatened in her own name and 'in the anme of my legal heirs' to make the buyers responsible for any harm done to the pictures 'they thus illegally acquire.'" (page 5).

The protest created an international incident that was reported on May 13, 1931 in the New York Herald Tribune, the New York Art Digest of June 1, 1931 and in the May 13,1931 Dresdener Nachrichten, among others. John Elliott reported in the Herald Tribune from Berlin on May 12, 1931 that Princess(sic) Scherbatoff-Stroganoff of Paris protested in writing to Lepke: "This collection remains entirely my property" and threatened in her own name and "in the name of my legal heirs to make the buyer responsible for any harm done to the pictures they thus illegally acquire. I am the sole heir of the Stroganoff Collection."

I have been informed and verily believe that as a result of my mother's protests, the auctioneer announced at the sale that purchases would be at the risk of the buyers, and that the auctioneer could not guarantee title. That my mother was right is indicated by the fact that on November 19, 1920, the USSR had promulgated a decree reading, in part:

"1. All movable property, irrespective of what it consists and wherever it may be situated, of citizens who have fled beyond the frontiers of the Republic or who are in hiding up to the present time shall be declared the property of the R.S.F.S.R.

"2. By order of the People's Commissariat for Education all antiques and objects of art, having a particular artistic and historical value, shall be transferred from the said property to museums, universities, and other educational institutions; the remainder of the property of such citizens shall be converted into a merchandise fund of the Republic and shall be placed at the disposal of the People's Commissariat for Foreign Trade and other people's commissariats, respectively." (emphasis supplied) (Collection of Laws, 1920, #87, Item 442).".

At the time this decree was promulgated my mother's brother, Count Serge Stroganoff, was living in Paris. He had been living there continuously since 1900. He had not fled at the time of the revolution. He was not in hiding. This decree did not apply to this internationally famous art collection, of which the subject painting was a part.

Mr. Weldon does not say when he came into possession of the 250 page Stroganoff catalogue, but it is usual for purchasers to secure possession of catalogues when buying catalogued items, before or immediately after purchasing. It seems a fair inference that Mr. Manning, the man who now claims that he was in error when he included "Count Serge Stroganoff, Leningrad, 1931" in the provenance of the painting when he collated defendant's catalogue in 1966 in New York, had that catalogue before

him. But he does not explain by affidavit or otherwise how or why he made this error. Perhaps he cannot make a plausible explanation that will serve Mr. Weldon's present purpose. As an experienced curator, he knew that the painting would not have been included in the Stroganoff Collection for sale at the then world famous Berlin auction house, unless it was part of that collection. He accepted the obvious, that it had been part of the Stroganoff Collection. That is how cataloguers create provenance. "Korsakoff" and "Hermitage" may have been based on like tenuous suggestions, just as easily repudiated if questioned. Since that 1931 catalogue listed the Hermitage Museum as the physical holder, he nevertheless concluded that it had been part of the Stroganoff Collection by 1931 restoration. It had apparently gone back into the collection of origin before the Lepke sale.

It was only after this action had been instituted that Mr. Manning wrote Mr. Weldon that "the name of Serge Stroganoff, with the date 1931, was listed in error among the collections...it had never been in that collection. All records indicate that your painting is from the Korsakoff Collection...". What records? Did someone by the name of Korsakoff buy the Crozat Collection of which the subject painting was a part? It was a family tradition that my great-great-grandfather had bought the famous Crozat Collection in 1741. Even the Stroganoff Palace

at 17 Nevsky Prospekt, 250 x 250 feet, did not house the entire Stroganoff Collection at all times. There just was not room enough for a collection that had been in the process of accumulation for over 150 years.

In his affidavit Mr. Manning describes himself as director and curator of the Finch College Museum of Art and swears that

> "Upon review of that entry and of the source upon which I relied in compiling it, I have determined that the name 'Serge Stroganoff' was erroneously included in the list of collections. My investigation of this matter reveals... it had never in fact been in that collection.".

What investigation? Weren't the "available art records", the phrase he now uses, available to him in 1966? He did not begin to consult "records" until March 27, 1974 when he heard from Mr. Weldon of this law suit, and he then makes his affidavit on February 7, 1975. Is this sufficient to deprive me of my day in court when Mr. Manning will be subject to cross-examination?

On March 29, 1974 Mr. B. B. Piotrovsky writes Brod Gallery of London:

> "This painting was not in the Stroganoff Collection....I hope that this will be of some help to you.".

But he fails to explain why it was included in the Stroganoff Collection sold in Berlin in 1931 nor does he favor us with information as to what the collection Kurzakov(sic) was, except by

referring to a 1902 Hermitage Catalogue.

Walk into any museum, and you see a number of items with labels "on loan from", in words or substance. A museum will usually list all items in its possession in its catalogue, whether it is the property of the museum or not. Safe from process in Leningrad or Moscow, Mr. Piotrovsky still wants to oblige Mr. Brod, whom defendant may call on to make good whatever Mr. Weldon's loss may be as a result of this lawsuit. Even Mr. Brod could not get more information from Leningrad.

Defendant claims that the Stroganoff Catalogue as such is "hearsay" and therefore not evidence. As aforesaid, the facts compel him to trace his claim to ownership to this very document, and to fact of sale on May 12-13, 1931 when Sabin bought at Lepke's and sold to Brod, defendant's source. It is the provenance that is hearsay, and it is that on which he may not rely to defeat my rights, when seller and auctioneer included the painting in the collection which I claim is my property. That raises at least a presumption in my favor that it was part of the collection. That presumption has not been overcome by the speculations of defendant, his attorney, his cataloguer, or his foreign correspondents. He must base his right, if any, to keep it as his own property, on the documents which he now

accepts only selectively. The "provenance" is correct, he now claims, but that it was part of the Stroganoff Collection is not the fact. But he must trace his right, if any, to keep it as his own, on the sale of it as part of the Stroganoff Collection.

In this connection, it may be of interest to remember that in the 1950's the USSR brought the Shukin Collection to Paris, but advertised it as the USSR Collection. When the Shukin family in Paris threatened suit, the paintings were whisked back to Russia in 24 hours. Years later, after the Soviets had made their peace with the Shukin family, they exhibited the collection in Bordeaux.

Defendant's papers boil down to a deduction based on an assumption. The assumption is, that if the subject painting were part of the Stroganoff Collection, the catalogue would have so stated. From this he wants the court to deduce that in its absence, including other names, it had never been part of the Strognaoff Collection, Manning's acceptance of Stroganoff as part of the provenance to the contrary notwithstanding.

If the assumption is false, defendant's desired deduction may not be made. It simply is not true that lack of "provenance" or faulty provenance, in a catalogue means that the object is or was or was not part of the named collection,

and that mention of other collections means that the object was not part of the named collection when offered for sale, when it was obviously so presented at public vendue.

Is it not extraordinary, that, having available as the source of facts: Mr. Robert L. Manning, the director and curator of the Finch College Museum of Art, Prof. B.B. Piotrovsky, the Director of the Hermitage Museum of Leningrad; Mr. Thomas Brod, of the gallery which sold the painting to defendant; David Giles Carter, the man who included the painting in the Catalogue of the Museum of Art of the Rhode Island School of Design when it was exhibited there in 1964, defendant presents the affidavit of his attorney as the sole "expert" on the meaning of lack of names or inclusion of names, as the basis of this motion? Expert opinion that the name under which a world famous collection is presented for sale in the world market is no indication of ownership, but the "provenance" from sources unknown is of probative force!

None of the experts available to defendant says so. In fact, Mr. Manning said to the contrary in his provenance. It may be tantamount to an admission against interest. In 1966, years before the lawsuit, Mr. Weldon had no objection to having my illustrious uncle's name described as a former owner. Mr. Manning now says that he made a mistake,

and vaguely hints at sources of his 1974 (post-suit) enlightenment. The 1931 Lepke cataloguer is not now available. Did he make mistakes that he would now retract if he could be found?

Among the conditions of sale in that catalogue, we find:

> "Responsibility for defects are therefore excluded, in particular catalogue attribution are not guaranteed.... (a free translation of part of Conditions of Sale 3).

Having been subjected to adverse decisions in the intervening years, our local auctioneers are more specific in their Conditions of Sale, among which we now find:

> "Neither the galleries nor the consignor makes (sic) any warranties or representation of any kind or nature with respect to, nor shall they be held responsible or liable for, the correctness of the catalogue or their description of the physical condition, size, quality, rarity, importance, provenance, exhibitions, literature and historical relevance of the property and no statement in the catalogue.....shall be deemed such a warranty or representation or an assumption of liability with respect thereto.(emphasis supplied). (Conditions of Sale, Sotheby Parke-Bernet, Sale #3734, March 6, 1978).

Defendant insists that he may trace his alleged title through the catalogue, but I may not. For him, the catalogue itself is prime evidence of the validity of his "chain of title". For me, he argues, the catalogue qua catalogue is hearsay, but the provenance of #80 therein is proof positive that it was not part of the Stroganoff Collection, despite the Finch College curator's opinion that it was.

I respectfully submit that the application should be denied.

Sworn to before me this )
2nd day of May, 1975. ) (sd) GEORGE STROGANOFF-SCHERBATOFF

CATHERINE [illegible]
Commissioner of Deeds, City of New York
N. Y. Co. Clks. No. 8, Reg. No. 0-N-12
Commission Expires Jan. 1, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - x

GEORGE STROGANOFF-SCHERBATOFF, :

Plaintiff, :

-against- :

CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN, : 74 Civ. 5750 (DBB)

Defendants. : NOTICE OF MOTION

- - - - - - - - - - - - - - - - - - - - - x

S I R S :

PLEASE TAKE NOTICE that upon the complaint, answer, the annexed affidavit of Betty J. Pearce sworn to October 16, 1975, and exhibits thereto, and upon the prior papers and proceedings had herein, defendants will move this Court, the Honorable Dudley B. Bonsal, United States District Judge, in the United States Courthouse, Foley Square, New York, New York 10007, on the 29th day of October, 1975 at 9:30 A.M., or as soon thereafter as counsel may be heard, for an order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure granting summary judgment in favor of the defendants dismissing the complaint with prejudice and for such other and further relief as this Court may deem proper.

PLEASE TAKE FURTHER NOTICE that you are hereby requested to serve any and all papers in answer to this

motion at least three (3) days before the return date of this motion.

Dated: New York, New York
October 17, 1975

DAVIS POLK & WARDWELL

By: _____
A Member of the Firm

Attorneys for Defendants
1 Chase Manhattan Plaza
New York, New York 10005
Telephone: (212) 422-3400

TO: LYMAN STANSKY, ESQ.
Attorney for Plaintiff
667 Madison Avenue
New York, New York 10021
Telephone: (212) 753-9755

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| GEORGE STROGANOFF-SCHERBATOFF, | | |
| Plaintiff, | : | 74 Civ. 5750 (DBB) |
| -against- | : | |
| CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN, | : | STATEMENT PURSUANT TO RULE 9(g) |
| Defendants. | : | |

Pursuant to Rule 9(g) of the General Rules of this Court, defendants, in connection with their motion for summary judgment dismissing the complaint with prejudice, state the following material facts as to which they contend there is no genuine issue to be tried:

1. The bust of Diderot was sculpted in 1773 by Jean Antoine Houdon, and was acquired by Count Alexander S. Stroganoff (1733-1811) during a sojourn in France. (Defendants' Exhibit A, p. 10; Defendants' Exhibit D, pp. 2-3, 6).

2. The bust became part of the collection of paintings, sculptures and objets d'art known as the Stroganoff collection. (Defendants' Exhibit B, pp. 1-3).

3. Following Count A. S. Stroganoff's return to Russia, the Stroganoff collection (including the bust) was housed at the Stroganoff Palace in St. Petersburg, and remained there until at least 1919 when plaintiff left Russia. (Defendants' Exhibit A, p. 12).

4. By the fall of 1919, the Soviet government

had taken possession of the Stroganoff Palace and its contents and had organized a state museum in what had been the Stroganoff Palace. (Defendants' Exhibit C, pp. 1-2).

5. As of 1922, the Diderot was on exhibit in the state-operated Stroganoff Palace museum. (Defendants' Exhibit C, p. 8).

6. The bust remained in the Stroganoff Palace museum as part of the Stroganoff collection until 1931 when, pursuant to the direction of the Soviet Government, it was transported to Berlin and sold at auction. (Defendants' Exhibit D, pp. 1-2; Defendants' Exhibit E, Plaintiff's Answer to Defendants' Interrogatory No. 7).

7. Princess Scherbatoff, plaintiff's mother, protested the sale by a letter in which she stated:

> "The Soviet republic has taken possession of this collection in a way that sets at defiance every principle of international law." (Defendants' Exhibit F, p. 2).

8. In 1974, Mr. Wrightsman donated the bust, which he had previously purchased, to the Metropolitan Museum of Art, which is the current owner.

9. Decree No. 111 of the Council of People's Commissars published on March 5, 1921, (on which plaintiff relies) confiscated the movable property of citizens who had fled the Soviet Union. (Defendants' Exhibit A, p.13).

10. Decree No. 245 of March 8, 1923 promulgated by the All-Russian Central Executive Committee and the Council of People's Commissars nationalized objects of art which were in museums and safeguarded by State means. (Defendants'

Exhibit G, p. 3).

Dated: New York, New York
October 17, 1975

DAVIS POLK & WARDWELL

By _____
A Member of the Firm

Attorneys for Defendants
1 Chase Manhattan Plaza
New York, New York 10005
Telephone: HA 2-3400

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - x

GEORGE STROGANOFF-SCHERBATOFF,

Plaintiff,

-against-

CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN,

Defendants.

74 Civ. 5750 (DBB)

AFFIDAVIT

- - - - - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

BETTY J. PEARCE, being duly sworn, says:

1. I am a member of the bar of this Court and an associate of the firm of Davis Polk & Wardwell, attorneys for defendants in this action. I submit this affidavit in support of defendants' motion for summary judgment.

2. Defendants' motion is based on the Act of State doctrine. The purpose of this affidavit is to present to the Court relevant materials which demonstrate the applicability of that doctrine to this case. Such materials, which are described below, are attached as exhibits to this affidavit.

3. Exhibit A is a deposition of George Stroganoff-Scherbatoff taken by the defendant in Strogonoff (sic) v. Metropolitan Museum of Art, 74 Civ. 3809 (DBB). That action involves the alleged conversion of another Houdon bust which was part of the Stroganoff collection, the bust of Voltaire. Plaintiff has admitted that both the Voltaire, and the

Diderot bust, which is the subject of the case at bar, were sold by order of the Soviet government in Berlin at the same 1931 sale. The facts of 74 Civ. 3809 and the legal issues raised therein are almost identical to the facts and the legal issues raised in this action.

4. Exhibit B consists of copies of excerpts from Sammlung Stroganoff, a sale catalogue prepared for the May 12-13, 1931 auction in Berlin of the Stroganoff collection. The excerpts are the title page, a description of the Diderot bust and a photograph of it.

5. Exhibit C is a Russian language copy and an English translation of a publication entitled "The Stroganov Palace-Museum, A Brief Guide". This publication was printed in 1922 in St. Petersburg by the Russian Academy of Sciences upon the instruction of the State Museum Fund. The exhibit describes the establishment of a State Museum in the Stroganoff Palace and notes that the Diderot bust was on public display. Page references to Exhibit C are to the numbered pages of the English translation.

6. Exhibit D is a French language copy and an English translation of an article by M. Louis Réau entitled "Eighteenth Century French Art in the Stroganoff Collection". The article appeared in the 1931 Bulletin of the Society of the History of French Art, published in Paris by Librairie Armand Colin. In the article, M. Réau briefly describes the origin of the Stroganoff collection and discusses the noteworthy pieces - including the Diderot - offered for sale in Berlin in 1931. Page references to Exhibit D are to the numbered pages of the English translation.

7. Exhibit E is plaintiff's answer to interrogatories served on him by Mr. and Mrs. Wrightsman in this action.

8. Exhibit F is a copy of an article appearing on page 15 of the May 13, 1931 New York Herald Tribune. The article describes the Berlin sale of the Stroganoff collection and refers to a letter of protest sent by plaintiff's mother to the firm which conducted the auction.

9. Exhibit G is a Russian language copy and an English translation of Decree No. 245 of the All-Russian Central Executive Committee and the Council of People's Commissars dated March 8, 1923. The decree nationalized objects of art, such as the Diderot bust, which were in museums and safeguarded by state means. Page references to Exhibit G are to the numbered pages of the English translation.

10. Exhibit H is the affidavit of Vladimir Visson, translator of the documents attached as Exhibits C and G, attesting to the accuracy of his translations.

11. Exhibit I is the affidavit of Johann Wille, translator of the document attached as Exhibit D, attesting to the accuracy of his translation.

Betty J. Pearce
Betty J. Pearce

Sworn to before me this
17th day of October, 1975.
Mary O'Donnell
Notary Public

MARY O'DONNELL
Notary Public, State of New York
Qualified in Bronx County
No. 03-2942525
Certificate filed in N. Y. Co.
Commission expires March 30, 1977

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - x

GEORGE STROGONOFF-SCHERBATOFF, :

Plaintiff, :

- against - : 74 Civ. 3809

METROPOLITAN MUSEUM OF ART, :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - - - x

25 Broadway
New York, New York

June 19, 1975
at 2:00 p.m.

DEPOSITION of GEORGE STROGONOFF-SCHERBATOFF, the Plaintiff herein, taken by the Defendant, pursuant to notice and adjournment to date, at the offices of Lord, Day and Lord Esqs., 25 Broadway, New York, New York, on June 19, 1975, at 2:00 p.m., before a Commissioner of Deeds of the City of New York.

HARRY BIRNBAUM
SERVING THE NEW YORK BAR FOR OVER 25 YEARS
CERTIFIED STENOTYPE REPORTERS
150 NASSAU STREET – NEW YORK, N. Y. 10038
BARCLAY 7-6330
LISTED IN MARTINDALE-HUBBELL

Appearances:

LYMAN STANSKY, Esq.
Attorney for Plaintiff
667 Madison Avenue
New York, New York 10021

LORD, DAY and LORD, Esqs.
Attorneys for Defendant
25 Broadway
New York, New York
BY: MURIEL BELL, Esq., of Counsel

- - - -

The parties stipulate that sealing, filing and certification of this deposition be waived, that it may be signed and sworn to before any officer authorized to administer an oath with the same force and effect as if before the officer before whom this deposition is deemed taken, and that a copy will be furnished plaintiff's attorney without charge.

- - - -

GEORGE STROGONOFF-SCHERBATOFF, having been first duly sworn by a Commissioner of Deeds of the City of New York, testified as follows:

EXAMINATION BY MRS. BELL:

Q Will you state your name and address?

A George Strogonoff-Scherbatoff, Sharon, Connecticut 06069.

Q How long have you lived at that address, sir?

A In Connecticut, over here in the States?

Q Yes.

A Since '29.

Q Before that can you tell me where you resided?

A I lived in France from 1919 till then, till that date, and then I was in England, when I was at Oxford for three years -- 1919, 1920, 1921. Then I stood in France after that. I spent here the first four-five years, half the time; half the time in France with my mother.

Q Where were you born, sir?

A London.

Q Can you give us the date?

A 23rd of March, old style; 11th of March, the Russian style, and 1897.

Q And what is your citizenship?

A U. S.

Q Can you tell me when you acquired U. S. citizenship?

A I acquired it in '41.

Q Do you claim title to the Houdon bust of Voltaire which is the subject of this action, by reason of your familia

relationship to Count Alexander Strogonoff?

A Yes.

Q Is that the Count Alexander Strogonoff who resided in Russia during the end of the 18th Century and th. beginning of the 19th Century?

A Yes.

Q And was this bust a part of a collection that was known as the Strogonoff Collection?

A Yes.

Q And is this the collection that was sold at auction in Berlin in 1931?

A Yes.

Q Was that auction conducted by order of the Union of Socialistic Soviet Republics, if you know?

A I don't know.

Q Do you know where the collection had been kept prior to 1931?

A No.

Q When you say no, does that mean that you do not know at any time prior to 1931 where the collection was kept

A I knew until I left Russia in 1919. In our house. In the Strogonoff house in Petrograd.

Q And that was up until 1919?

A As long as I was there.

Q And you left Russia in 1919?

A Yes.

Q Do you claim title or ownership of all the works of art that were included in the Strogonoff Collection as we have defined it?

A Yes.

Q Is your claim solely based on your relationship to Count Alexander Strogonoff? By that I mean do you base your claim on any bills of sale or other documents or titles

A The law.

Q You said?

A There was a law.

Q Can you tell me the substance of the law upon which you rely?

A Well, it was an entailed estate. It went to the eldest male, through the male line at first, and when that stopped, through the female line.

Q Can you tell me when this law was passed?

A In 1817.

Q And was that a law of Imperial Russia?

A Yes. Imperial Code of Russia. Oukase or ukase. A decree.

Q Is that the only law or what was the term you used?

A Oukase or ukase. A decree.

Q Is the decree to which you referred, dated 1817, the only law upon which you rely?

A There was another in addition to that in 1848 which added more to that same law. In other words, the heritage doesn't change. How the inheritance goes down hasn't been changed. It's just how much land was added and so on. That's all. It was really in addition to the 1817 law.

Q Can you tell me in what manner the law of 1848 did change the law of 1817?

A It didn't change it all. It just added more property to the existing property of 1817.

Q Do you have a copy of either or both of those laws or decrees?

A I can get a copy from the Library of Congress.

Q Do you have a copy in your possession?

A Mr. Stansky has a copy.

Q I show you the two documents that your attorney has just produced and ask you if these are copies of the two statutes to which you just referred?

A Yes.

MRS. BELL: Will you mark those for identification, please.

(Two documents are marked, consecutively, Defendant's Exhibits A and B for Identification, this date.)

Q I believe you offered to read just the title of the law for us.

A It says, "A full collection of the laws of the Russian Empire from 1649, Volume 34, 1817."

This one is the same thing.

MR. STANSKY: "This," meaning Defendant's Exhibit A for Identification, 6/19/75.

A (Continuing) And this says, "Full collection of the laws of the Russian Empire, Second Collection, Volume 22 First Part, 1847."

Q Thank you. Now, what is your relationship to Count Alexander Strogonoff, the person under whom you claim title to these works of art?

A Great, great, great grandfather.

MISS BELL: Would you mark this document which counsel for plaintiff has just produced and which he has indicated constitutes a genealogy tree of the Strogonoff family, as an exhibit for identification?

(Genealogy tree is marked Defendant's Exhibit C for Identification, this date.)

Q Will you refer to Defendant's Exhibit C and indicate for me by numbers the line of descent from Count Alexander Strogonoff upon which you predicate your rights in this action and, as you mark that, you will indicate the name of the person you are referring to and the number that you are designating?

A No. 1 -- Count Alexander Strogonoff.

MRS. BELL: Referring to the number.

A (Continuing) No. 2 -- Count Paul Strogonoff, son of Count Alexander.

No. 3 -- Countess Natalie Strogonoff, daughter of Count Paul Strogonoff.

No. 4 -- Count Serge Strogonoff, husband of Countess Natalie.

No. 5 -- Count Alexander Strogonoff, son of

Count Serge and Countess Natalie.

No. 6 -- Count Serge Strogonoff, son of Count Alexander.

No. 7 -- Countess Olga Strogonoff -- Princess Scherbatoff, sister to Count Serge Strogonoff.

No. 8 is myself.

Q Now, may I ask you, pointing to Exhibit C, to describe to me the other descendants of your mother?

A My eldest brother, Alexander, died in 1915, and my sister, Ellen, is still living.

Q What is your sister's name and present residence

A Ellen Scherbatoff. She lives in England.

Q And, can you tell me, does this chart indicate that your brother had three daughters?

A My brother had three daughters. Olga, Xenia and Sophie.

Q Is it your claim that you are the owner of the bust which is the subject of this action, and the other work of the Strogonoff Collection, to the exclusion of your brother?

A I don't understand what you mean.

Q Does your brother have any interest or ownership

with respect to these works of art?

A I would say --

Q Is it your claim that his descendants have no claim?

A Yes.

Q Can you tell me how the original Count Alexander Strogonoff acquired the bust and approximately when, referring to the bust which is the subject of this action?

A It was, I would say, roughly between 1770 and 1780, he commissioned the bust to the sculptor Houdon. Both Voltaire and Diderot were friends of Count Alexander Strogonoff.

Q Did he bring the bust in question back to Russia

A Yes.

Q And do you know if it remained in Russia from that time up until the date, I believe you testified, of 1919, which is the last date you indicated you knew that it was in Russia?

A Yes.

Q Is it your contention that the ownership of the works of art contained in the collection cannot be alienated by any of the members of the family by Will or by Deed?

A Yes.

Q You do not rely on any Will or bequest of any of your predecessors?

A No.

Q Can you tell me, when did your mother die?

A In July '44.

Q Where was she residing at the time?

A She was residing outside of Paris. Ste. Genevieve Du Bois.

Q And before your mother became entitled to the collection, I believe you indicated it was your uncle --

A My uncle.

Q His name?

A Count Serge Strogonoff. No. 6.

Q When did he die?

A The beginning of May, 1923.

Q Where did he reside at that time?

A He died on the Riviera. Cap-Estel.

Q And do you know whether he had resided there for the period from 1917 to 1923?

A He resided there from 1896.

Q Continuously until his death?

A Yes. He also had a residence in Paris, 48-50 Rue de la Faisanderie, and also near Troies Chateau St. Aventin in the Province of Aube.

Q Did your uncle at any time after 1919 have the bust in question or other works in the collection in his possession at his residence or outside of Russia?

A No.

Q After his death did your mother, at any time to your knowledge, have the bust in question or the collection in her possession outside of Russia?

A No.

Q You do not know where the collection was kept after 1919?

A No.

Q And where was the collection, including this bust, in 1919 at the time that you left Russia?

A At the Strogonoff palace, 17 Nevky Prospekt, St. Petersburg -- later Petrograd, later Leningrad.

Q Do you know of any acts, decrees or laws by the government of Imperial Russia other than those you have testified about that affected or referred to the Strogonoff Collection?

A No.

MR. STANSKY: The source is the collection of laws and decrees of the workers and peasants government, 1921, Moscow, Page 106. This was furnished to me as a correct translation. I cannot vouch for it but I believe it to be so:

"Regarding the confiscation of all movable property of citizens who have fled beyond the frontiers of the Republic or who are in hiding up to the present time, supplementing the decree of the Soviet of People Commissars regarding homeless property (collection of laws, 1920 No 87 Item 442) the Soviet of Peoples Commissars has resolved: 'All movable property irrespective of what it consists of wherever it may be situated, of citizens who have fled beyond the frontiers of the Republic or who are in hiding up to the present time shall be declared the property of the U.S.S.R.'"

That's the pertinent part of this.

Q Will you tell me again -- I'm sure you did testify -- where were you living in 1931?

A Here in the States. New York City.

Q And was your mother residing at the address you have previously testified to?

A No.

Q Where was she living in 1931?

A I don't remember the street. She resided in Bellevue, in the suburbs of Paris.

Q When for the first time did you learn anything about the whereabouts of the Strogonoff Collection, includir this bust, after 1919?

A It was in '31, during the sale, just before the sale.

Q You learned of the auction some time before it actually took place?

A Yes.

Q Did you learn anything at that time with respect to the whereabouts of the collection or its transfer to the auction in Berlin?

A I only learned it was to be auctioned off in Berlin. That's all.

Q Did you attend the auction?

A No.

Q Do you know if your mother attended the auction?

A No, she didn't.

Q And do you have with you today a copy of the catalog of that auction?

A Yes.

Q Would you look at the attached Xerox copies which I am going to ask the stenographer to mark as Defendant's Exhibit D for Identification, consisting of five pages, and ask you if that represents true copies of excerpt from the catalog of the auction in question?

A They do. They are very poor. Especially the photographs of the reproduction of rooms, but otherwise it's correct.

(Five-page document is marked Defendant's Exhibit D for Identification, this date.)

Q Is the bust that is depicted on Page 4 of Exhibit D better reproduced on Page 225 of the original catalog, the bust of Voltaire, which is the subject of this action?

A Yes.

Q Did you make any inquiry as to the purchase of this bust at the auction in Berlin in 1931, as to whether it was sold, or the name of the purchaser, at any time since

then?

A Right in the beginning, yes.

Q Can you tell me what information you learned?

A Bought by Seligman.

Q Is that an art dealer?

A Art dealer. Yes.

Q Where are they located?

A In Paris. I think his name was Arnold Seligman. I'm not sure.

Q When you say right away, did you learn this in 1931?

A I don't remember exactly. Either in '31 or early '32. Soon after the sale.

Q Did you inquire of Seligman as to whether they had purchased it for a principal?

A No.

Q Did you make any inquiry at all to Seligman regarding the purchase of this bust?

A No.

Q To your knowledge did your mother make any inquiry?

A No.

Q Did your mother at any time prior to her death, to your knowledge, make any claim or bring any proceeding with respect to her claim to any of the works of art in this collection?

A She protested by letter before the auction which was publicized in most of the papers throughout the world.

Q Do you know if your mother took any other action or brought any other legal proceeding against anyone with respect to this collection, after the auction?

A No.

Q Did you take any action or make any claim with respect to the bust which is the subject of this action prior to the time that your claim was presented to the Metropolitan Museum?

A No.

Q When for the first time did you learn anything as to the whereabouts of the bust which is the subject of this action?

A Only when we found out it was in the Metropolita last year or the year before, or whenever it was that a letter was written to Wrightsman.

MRS. BELL: Would you mark this for

identification, please.

I'm referring to a copy of the plaintiff's answers to interrogatories in this action.

(Document, answers to interrogatories, is marked Defendant's Exhibit E for Identification, this date.)

Q I show you the exhibits attached to Exhibit E, directing your attention to a letter to Mr. Wrightsman, and ask you if that refreshes your recollection as to when you first learned the whereabouts of this bust?

A Yes, it does.

Q Now, what is your answer as to when you did, in fact, learn that?

A That's when I learned about it.

Q And would that be in --

A January '74.

Q How did you learn anything as to the whereabout of this bust at that time?

A Someone told me.

Q Have you at any time after 1931 made any clain or brought any legal proceedings with respect to your clai ownership of any of the other works of art in the Strogon Collection?

A I made a claim in Holland about two paintings.

Q And what were those two paintings?

A Cranach.

Q And that claim was made against whom, sir?

A Against the Dutch government.

Q And do you know how the Dutch government had come into possession of those two paintings?

A They belonged to a dealer, Dutch dealer, who bought those paintings. He died and it became part of the Goering collection and then was returned to Holland after the war.

Q Do you know from whom the art dealer had purchased it?

A At a sale.

Q You are referring to the auction in 1931?

A Yes.

Q Did you bring a legal proceeding involving these paintings?

A No, because the Dutch government and Prince Bernhard wanted to settle outside of court.

T2

Q Did you secure the return of the paintings?

A Yes. He's the husband of the Queen.

Q Did you bring any other proceedings involving the Strogonoff Collection following the auction in 1931?

A Started in France against Seligman.

Q When was that?

A A few years ago. I don't remember exactly.

Q Was that a proceeding brought in the court in France?

A In the court. It was dropped because it was found that the Seligman companies changed hands so many times that it was impossible to trace.

Q Then do I understand that you dropped the case against Seligman?

A Yes.

Q When was that?

A Must have been in the middle sixties. Well, it had to start before '61, before the 30 years elapsed, the statute of limitations in France.

Q When you receive the transcript of this deposition will you please indicate for me the name of the action that was brought in France and any docket number or identification, including the name of the court?

MR. STANSKY: If available it will be furnished.

Q To the best of your recollection was an action actually instituted?

A No, because there was so many different companie Seligman companies, involved over the years.

Q Is it your testimony that an action was or was not commenced?

A I'm not sure. I don't think it was.

Q I believe you testified you acquired United States citizenship in 1941; is that correct?

A Yes.

Q What was your citizenship before that?

A It was League of Nations. NANSEN passport.

Q You had a NANSEN passport?

A Yes.

Q And that was issued by or through the League of Nations?

A Yes.

Q When did you first receive that?

A 1920.

Q And prior to 1920 what was your citizenship?

A Russian.

Q And did there come a time when you lost your

Russian citizenship?

A Yes. When I became an American citizen in 1941 and then joined the United States Navy in 1942 and was discharged as a Commander.

Q To your knowledge did you retain your Russian citizenship up until the time you became a United States citizen?

A No. I didn't.

Q You did not retain it?

A No, because I had the NANSEN passport.

Q During the period of time you had the NANSEN passport then you did not have Russian citizenship?

A No.

Q Did you at any time renounce Russian citizenship?

A I did when I became an American citizen.

Q And prior to that time did you renounce your Russian citizenship?

A No.

Q Prior to your leaving Russia or the U.S.S.R. in 1919 had there been any legal proceedings brought against you by the government?

A No.

Q Did you leave the country voluntarily?

A Yes.

Q Do you know of any legal proceedings or governmental actions which were taken against you after you left Russia in 1919?

A No, I do not know.

Q Well, in view of the fact that I have not had the benefit of the production of the Russian laws prior to this date and in view of the fact that they require translation in order to understand their full import I would like to close the examination subject to opening it again if, as a result of examining those statutes, it becomes necessary to explore further matters.

MR. STANSKY: No objection.

Q Can you tell me how you arrived at the sum of $250,000 as the value of the bust that's the subject of this action?

A On advice of Mr. Stansky.

Q You, yourself, have not had any appraisal made or expert advice obtained regarding the value of the property?

A I think there was some expert advice from a

friend of mine who is a dealer.

Q Can you tell me his name?

MR. STANSKY: No.

MRS. BELL: That's objected to?

MR. STANSKY: Yes.

Q Is that the only information or source that you, yourself, have personally received?

A Yes.

Q Can you tell me if you claim that any person other than the Metropolitan Museum converted or unlawfully took the bust which is the subject of this action from your possession or against your right?

A Yes. Charles Wrightsman, against whom claim was made before it was discovered that it had been purchased with the funds furnished by him and then found its way into the possession of your client, Metropolitan Museum.

Q Have you dropped your claim against Mr. Wrightsman?

A No.

Q Is it your contention that any other persons or entities converted or wrongfully took this property?

A Not to my knowledge.

Q Have you ever made any claim or brought any proceeding wherein you contended that other persons or entities wrongfully took this object?

A No.

Q And you have already testified as to all other proceedings or claims that you brought with respect to any other objects that were in the Strogonoff Collection?

A No. We made another claim in France.

Q And that would include any claim that you might have made against any government apart from the Dutch government that you testified about?

A Yes.

Q Can you describe those claims to me and tell me when they were made and the disposition?

A They were made in the last five-six years. I don't exactly remember the years. About four years ago, three years ago.

Q Are those claims still pending?

A No. They are finished.

Q Were those claims brought in a court of law?

A In France.

Q Can you describe what the subject of those

claims was?

A Pieces of furniture which were sold in 1931.

Q Was this one claim or action?

A One claim.

Q And whom was this brought against?

A Ben Simmon.

Q Is that an art dealer?

A Art dealer, yes.

Q Can you tell me the resolution or disposition of that claim?

A The final resolution went against us.

Q And do you know when that was decided or determined approximately?

A I think about two years ago.

Q And I would ask you when signing this deposition to provide whatever title or identification number or other description of the litigation in France.

MR. STANSKY: If available it will be provided.

MRS. BELL: Okay.

Your witness, Mr. Stansky.

EXAMINATION BY MR. STANSKY:

Q Have you brought an action against one Weldon

for a painting, a Van Dyke?

A Yes.

Q Is that action pending?

A Yes.

Q In the United States District Court, Southern District of New York?

A Yes.

George Strogonoff-Scherbatoff

Subscribed and sworn to before me

this ____ day of _____, 1975

Notary Public

# C E R T I F I C A T E

STATE OF NEW YORK )
) ss.
COUNTY OF NEW YORK )

I, GERTRUDE WACHTEL, a Shorthand Reporter and Commissioner of Deeds of the City of New York, do hereby certify that:

GEORGE STROGONOFF-SCHERBATOFF, the witness whose deposition is hereinbefore set forth, was duly sworn by me, and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of July, 1975.

Gertrude Wachtel

Gertrude Wachtel

# I N D E X


| Witness | Page No. |
|---|---|
| George Strogonoff-Scherbatoff | 2 |


## Exhibits


| Defendant's Exhibit No. for Ident. | Description | Page No. |
|---|---|---|
| A - B | Two statutes | 7 |
| C | Genealogy tree | 8 |
| D | Five-page document, excerpts from auction catalog | 15 |

# SAMMLUNG STROGANOFF

## LENINGRAD

IM AUFTRAG DER HANDELSVERTRETUNG DER
UNION DER SOZIALISTISCHEN SOWJET-REPUBLIKEN

RUDOLPH LEPKE'S KUNST-AUCTIONS-HAUS
BERLIN W 35 / POTSDAMER STRASSE 122a—b

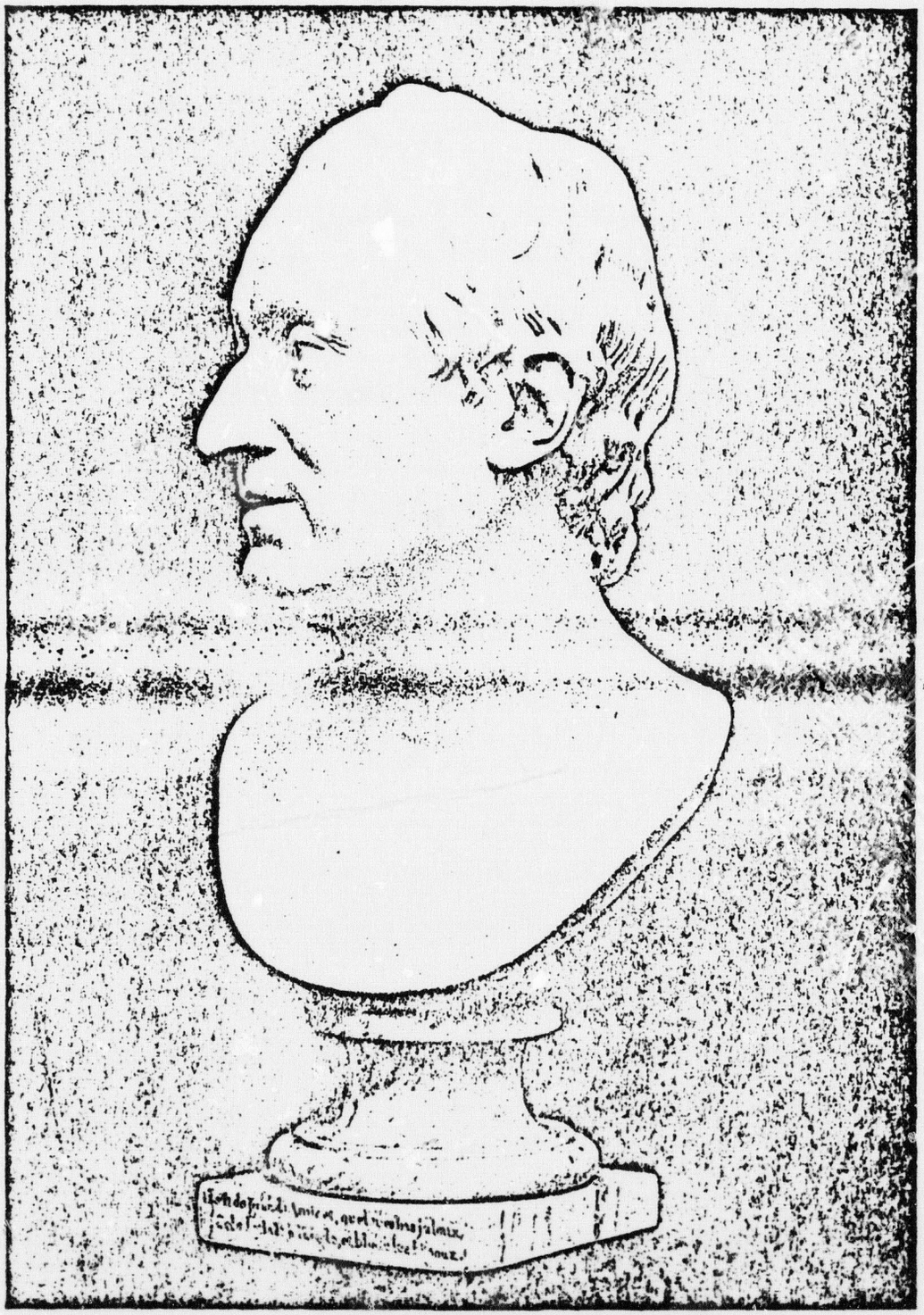
KATALOG 2043 MIT 125 TAFELN

225. BÜSTE DIDEROTS

aus weißem Marmor, mit schmalem Schulterausschnitt. Auf dem Rückenabschnitt eingemeißelt die Bezeichnung: Mr. Diderot fait en 1773 par Houdon. Runder Sockel aus grau gesprenkeltem Marmor. Auf der Plinthe eingraviert der Vers:
Il eut des grands amis et quelques bas jaloux
Le Soleil plait a l'aigle et blesse les Hiboux.

H. 55 cm.

Von Houdon 1773.
Abbildung nebenstehend.





225

EXHIBIT C - RUSSIAN WITH ENGLISH TRANSLATION OF A PUBLICATION ENTITLED "THE STROGANOV PLACE-MUSEUM, A BRIEF GUIDE" (pp.74a-93a)



STATE MUSEUM FUND

# THE STROGANOV PALACE - MUSEUM

## A BRIEF GUIDE

Printed in Petersburg at the Russian Academy of Sciences

1922

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Upon the instruction of the State Museum Fund

Curator of the Palace-Museum K. Trever

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## FOREWARNING

In September 1919 the scholarly staff of the picture gallery of the State Hermitage, following the suggestion of the Section of Museums and Safeguarding of monuments of art and antiquity, proceeded to install a museum in the Stroganov palace. After getting acquainted with the material located in the palace, it was found out that besides the original (basic) Stroganov picture gallery collected by the Count A.S. Stroganov at the end of the XVIII century and enlarged by the Count S.G. Stroganov in the middle of the XIX century, there is in the palace also the collection of Count P.S. Stroganov, transferred to the palace after the death of its owner, from his town-house in the Sergeievskaya street. However,

the gallery, as well as the collection, were far from being complete -- many paintings were sent to Moscow in 1917. In 1920 they were returned to Petersburg together with the Hermitage collections, and at the present time they are at the Hermitage where they will be on view in "The Second Hermitage Exhibition," arranged in the rooms of the Winter Palace. Among them are such first-class pictures like "The French St. Louis" by Boltraffio, previously considered to be a work by Leonardo da Vinci, a tetraptych by Sandro Botticelli, the "Annunciation" by Filippino Lippi, a portrait of a young monk by Rembrandt, and a landscape by him, "Deanira and Ness" by Rubens and many others.

Soon after the opening of the palace-museum which took place in November 1919, one of its important masterpieces -- the bronze bust attributed to Donatello, was stolen, and consequently it was decided temporarily, until the installation of a better organized safeguard of the palace-museum, to transfer to the Hermitage certain paintings.

In the present guidebook, compiled during the museum's installation, these paintings are on view on their respective places.

F. NOTGAFT

GUIDE

The Stroganov palace was built by Count Rastrelli the Younger in the fifties of the XVIII century. The exterior of the palace, to judge by the engravings which reached us, did not change; while most of the inside premises have a much later character; in the nineties of the same century, the great Russian architect, Andrei Voronikhine, a former Stroganov slave, upon his return to his motherland after a long stay abroad, decorated many chambers of the palace and did it with such an impeccable taste that even at the present time the Stroganov palace is one of the most beautiful architectural works among the lordly town-houses of Petersburg. At the same time the palace contains a whole series of first class art works, for which the palace chambers present an absolutely irreplaceable depository.

Art treasures which are now on view at the palace were collected at different periods. The first of the Stroganovs who systematically assembled the art works with big artistic flair and taste was Count A.S. Stroganov (1733-1811), who greatly contributed to Russian art as amateur and as the president of the Arts Academy. After his death the collection was enlarged by the Count S.G. Stroganov and finally, already in the fifties and the sixties of the XIX century, Count P.S. Stroganov

assembled a big collection of paintings as well as of different objects of art, furniture, bronze, china and so on. All the Stroganov collections are presently mainly in the "reception" rooms of the palace facing the Nevsky (Prospect) and the Moika quai; however, the famous Gallery is facing the yard, as well as the so-called "library," a small sized room in which the primitives are grouped.

Going up the Voronikhine main staircase decorated by him in a very severe, but at the same time majestic way, which is supported by Doric columns which seem as if they were grown into the ground, we enter into the foyer. Here, on the wall, to the right of the window hangs a portrait of Rubens and his son. This work which used to be considered as a work of the greatest Flemish painter, this portrait most probably is a work of the brush of one of the Master's pupils. Facing it hangs a woven portrait of Catherine II, a product of the Petersburg tapestry factory. Then we should pay attention to the small treasury chest, made in Augsburg at the end of the XIII century, very fanciful and elegant. On the small "Boule" table, in front of the window -- a group of terracotta by the Russian sculptor of the beginning of the XIX century, Ivan Prokofiev -- a study for a fountain.

From the foyer we proceed to a big room, one of the few premises of the palace, preserved intact, the way Rastrelli made it. The room is almost square, and its height is almost the same as its width. On the walls painted in yellowish pink, there is a very sumptuous but at the same time gracefully shaped white Rococo design. The room is decorated by huge portraits of the Count A.S. Stroganov in an attire of an Andreiev Cavalier with the Kazansky Cathedral in the background, painted after his death by Varneke in 1814, and of Alexander I and his wife Elizaveta Alexeevna, by the French painter Mosnier. In the center of the room, a marble bust of Catherine II, a work of the French sculptor Houdon (1773) and also marble statues of prince Yacov Dolgorouky, a known contemporary of Peter the Great, a work by Kozlovsky, and of Roumiantzev-Zad Unaisky, a work by Rachette. Pieces of furniture of the Catherine period with crimson upholstery stand along the walls and in front of the windows. It should be noted that the whole ceiling is covered by a gigantic painting, in excellent state of conservation, probably by the famous Italian decorator Valeriani and representing the arrival of some mythological hero (Aeneas?) on the Olympus. Over the six room doors are placed paintings of an unknown Italian painter, possibly by the same

Valeriani, representing scenes from the Aenied. The adjacent room, the so-called "small dining room" with walls made of artificial marble, decorated by charming bas-reliefs (by Prokofiev?) on a yellow background and picturesque arabesques on the ceiling, is one of the best examples of the classical style in Russia. Its furniture is made correspondingly: among the furniture pieces one should mention a very elegant small French chest of drawers of the middle of the XVIII century.

In the last living room facing the Moika, the big tapestries, woven after the cartons of the painter J. F. de Troyes The Younger, deserve particular attention; woven in the forties and fifties of the XVIII century they represent episodes from the myth about Jason. A great number of bronzes (among them works by the famous Frenchman Clodion) are displayed on the tables and small dressers. In the center is a French XVIII century table with Japanese lacquer and beautiful bronze decoration.

Returning to the foyer, after having crossed it, we enter a corner room, a big dining room, probably decorated after Voronikhine's designs. Unfortunately the impression one gets from this big room executed in a dignified style and yellow colors and ornated with half-columns, is spoiled by stove made at a later date.

On the walls, between the columns, a whole series of pictures, among which stand out: a big landscape with figures by the XVII century Dutch painter, Peter Wouverman, a charming little painting representing an amorous scene by the wonderful French painter of the beginning of the XVIII century Antoine Watteau, "The Weaver" by the Dutch painter Gabriel Metsu (of particular interest as it is one of the earliest works of the master, 1632) a big portrait of a general, painted by the great Venetian of XVI century, Tintoretto, and "A Little Girl", a copy of a Rembrandt painting made by the known XVIII century English painter, Joshua Reynolds.

Next we get to a very modest but attractive white foyer with white bas-reliefs. The decoration of this room was attributed to Rastrelli himself. A very good portrait of the architect of the palace hangs here; this portrait attributed to Rotari, reminds us more of the work of the Frenchman Tocque who lived in Russia in the fifties of the XVIII century. Then one should note the allegorical painting by the Neapolitanian painter Solimena (end of XVII and beginning of XVIII century) and an excellent portrait of Peter the Great which is believed to be the work of one of the earliest Russian painters, Ivan

Nikitine. The head of Peter the Great made out of stone reminds us of works by the father of the architect of the palace, the sculptor Rastrelli the Elder two authentic works by this excellent master are also right here: a version of a model for a monument to Peter, which stands in the front of the Engineer Castle, and a small bronze Neptune (on the little table, at the right).

The next room "The Hubert Robert Room" got its name from six big paintings of this famous French painter of the end of the XVIII century, whose works are in great number at Russian museums, palaces and town houses. The Robert's pictures which are in the Stroganov palace were commissioned by A. S. Stroganov especially to decorate this room where they are still up to the present time. Besides the architectural landscapes of the French master, in this very same room are stored "Ruined temples", two pictures by the Roman painter of the first half of the XVIII century Pannini, a big allegory of the Neapolitan Luca Giordano, "The Holy Family" by the Bolognese Agostino Carracci, and two paintings by the Venitian XVIII century painter Marchesini. We also have to note marble busts of the great Frenchmen of the XVIII century, Voltaire and Diderot, works by Houdon.

The adjacent room is all decorated with excellent copies of Raphael murals "the loggias", which were especially made (very probably by the same Unterberger who made copies for the Hermitage gallery) and are set into the walls. On these premises are clllected works of antique art, as well as sculpture of the Renaissance period.

From the Raphael room we get into a small gallery which faces the yard. Here hangs the collection of count P. S. Stroganov assembled in the middle of the XIX century and consisting of a whole series of outstanding works by the early Italian and Netherland masters. Among the first ones a representation of the Virgin with the Child by the great Umbrian of the beginning of the XV century Gentile da Fabriano, the early Venitian Bartolomeo Vivarini (signed and dated 1490); a pupil of Leonardo da Vinci the Lombardian. Giampetrino, Niccolo Aluno, Marco Bello and some unknown masters. Among the Italian paintings it is also necessary to mention a full size representation of the Virgin and St. John by the Florentine of the second half of the XV century Jacopo Sellaio. Among works by masters of Northern schools are particularly remarkable half-size figures of a man and a woman by Nicola Neuschatel, the Antwerp master of the XVI century, who lived and worked in Nurnberg. Next,

of great interest are two paintings by Netherland Masters, unknown to us, of the middle of the XV century, who should be considered as close followers of Rogier van der Weyden: Virgin with the Child and Jesus with a crown of thorn. Quite enigmatic is a small attractive picture of one of the Netherland painters of the first half of the XVI century, representing the Birth of Christ. Besides the works we indicated, two portraits of me are extremely interesting: one is considered to be the work of the Netherland painter of the first half of the XVI century, Antonis Mor, the other one - of an exceptional quality, is attributed to Jacob Cornelis Van-Amsterdam. In the same chamber are displayed excellent examples of Italian furniture of the Renaissance period. On the dressers is arranged wooden scuplture, Italian and German. The bronze model of the statute of Pope Gregory XIV is wonderful work of the culptor Algardi.

Going back through the Raphael room, we enter a small library (at one time it used to be called the billiard room), a charming room decorated with 12 small columns and excellent bas-reliefs. The very unusual cupola of this room has a little gallery along the walls of which are showcases arranged for the display of the collection of minerals.

On the walls of this chamber hang portraits of the members of the Stroganov family; it should be pointed out that the portraits of two countesses were painted at the end of the XVIII century by two excellent portraitists : Vigee-Lebrun and Lampi the Elder.

From this room we get into the best quarters of the palace : the picture gallery, decorated after Voronikhin's design. This gallery which is extremely grandiose in its proportions, with exquisite small details and wonderful bas-reliefs in semi-circles over the columns, is doubtless Voronikhin's best creation and fully deserves to be a depository of those treasures which are housed in it since the very first days of the creation of the collection.

In grouping the pictures according to their schools, it is necessary to point out among the Italians the following ones : a huge one by the Neapolitan master of the XVII century Luca Giordano "The battle of Centaures with the Lapfians", "Ariadna" by Furini and "The Allegory of Fine Arts" by the Genovese Strozzi. One of the masterpieces of the gallery is also "The Holy Family" by Angelo Bronzino, the Florentine XVI cnetury master. Among the Dutch paintingd stand out : "A View of Haarlem" by Jacob Ruisdael, "A Seascape" by Simon de Vlieger, a first class picture, "The "Riders" by Adrian van de Velde, a delightful landscape with cattle, by Dirk van Bergen, a church interior by Emmanuel de Witte and a whole series of portraits, among

them remarkable women portraits by Govert Flinck and Bartholomeus van der Helst. The Flemish school is represented by three superb Van Dyck portraits ; the one of a lady with a little girl is particularly beautiful. Among the Frenchmen Poussin is represented superbly with two paintings : "Rest on the way to Egypt" and "The Bacchanalia", Claude Lorrain with an Arcadian landscape with dancing shepherds and De Troyes with a very impressive "The Abduction of Proserpine". Finally, in the same gallery we find also three Russian pictures : a study of a man's head by Alexander Ivanov, "A Ball Player" by Karl Brulov and a "Old Beggar" by Schebuev. Among the sculpture works we should mention one of the replicas of "The Cupid" by Falconnet and "The Triumph of Vatherine 11 by Tassaert. Quite remarkable are some other objects in the gallery, particularly the sumptuous French candelabra of the end of the XVIII century, which stand between the columns.

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ГОСУДАРСТВЕННЫЙ МУЗЕЙНЫЙ ФОНД

# СТРОГАНОВСКИЙ

## ДВОРЕЦ-МУЗЕЙ

КРАТКИЙ ПУТЕВОДИТЕЛЬ

Печатано в Петербурге при Российской Академии Наук
1922 года.

86а
[13]

По распоряжению Государственного Музейного Фонда
Хранитель Дворца-Музея К. Тр[illegible]

# Предуведомление.

В сентябре 1919 года научный персонал картинной галереи Государственного Эрмитажа, по предложению Отдела Музеев и Охраны памятников искусства и старины, приступил к устройству музея в Строгановском дворце. По ознакомлении с имевшимся во дворце материалом выяснилось, что кроме основной Строгановской картинной галереи, собранной гр. А. С. Строгановым в конце XVIII века и пополненной гр. С. Г. Строгановым в середине XIX века, во дворце находится также и коллекция гр. П. С. Строганова, переведенная во дворец после смерти владельца из его особняка на Сергиевской улице. Однако, как галерея, так и коллекция оказались далеко не в полном составе — многие картины были отправлены в Москву в 1917 году. В 1920 году они вернулись в Петербург вместе с Эрмитажными собраниями, и в настоящее время находятся в Эрмитаже, где будут показаны на „Второй Эрмитажной выставке", устраиваемой в залах Зимнего Дворца. Среди

87а
[11]

них имеются такие первоклассные картины, как „Св. Людовик Французский“ Больтраффио, считавшийся раньше за произведение Леонардо да Винчи, тетралтих Сандро Боттичелли, „Благовещение“ Филиппино Липпи, портрет молодого монаха Рембрандта, его же пейзаж, „Деянира и Несс“ Рубенса и мн. др.

Вскоре после открытия дворца-музея, последовавшего в ноябре 1919 года, из него была похищена одна из главных его достопримечательностей — бронзовый бюст, приписываемый Донателло, вследствие чего было решено временно, впредь до создания более организованной охраны дворца-музея, перевести в Эрмитаж некоторые картины.

В настоящем путеводителе, составленном во время устройства музея, картины эти показаны находящимися на соответствующих местах.

*Ф. ПОТТАФТ.*

# Путеводитель.

Строгановский дворец построен графом Растрелли-младшим в пятидесятых годах XVIII столетия. Внешний вид дворца, судя по дошедшим до нас гравюрам, не изменился; зато большинство внутренних помещений носит значительно более поздний характер: в девяностых годах того же века великий русский зодчий Андрей Воронихин, бывший крепостной Строгановых, вернувшись на родину после продолжительного пребывания за границей, отделал многие покои дворца, и отделал их с таким исключительным вкусом, что и поныне Строгановский дворец является одним из прекраснейших произведений архитектуры среди многочисленных барских особняков Петербурга. Вместе с тем, дворец заключает в себе целый ряд первоклассных произведений искусства, для которых покои дворца являются совершенно незаменимым хранилищем.

Художественные сокровища, которые теперь выставлены во дворце, были собраны в



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разные эпохи. Первым из Строгановых, систематически, с большим художественным чутьем и вкусом собиравшим произведения искусства, был граф А. С. Строганов (1733—1811), сделавший очень много для русского искусства и как любитель, и как президент Академии Художеств. После его смерти коллекция пополнялась гр. С. Г. Строгановым и, наконец, уже в пятидесятых-шестидесятых годах XIX века, гр. П. С. Строганов составил большое собрание, как картин, так и разной художественной утвари, мебели, бронзы, фарфора и проч. Все Строгановские коллекции размещены, главным образом, в парадных комнатах по фасадам дворца по Невскому и по набережной Мойки, однако знаменитая галерея выходит окнами во двор, так же как и так называемая „библиотека", небольшая комната, в которой сгруппированы примитивы.

Поднявшись по отделанной Воронихиным очень строгой, но вместе с тем и величественной парадной лестнице, поддерживающей как бы вросшими в землю дорическими колоннами, мы входим в переднюю. Тут на правой (от окон) стене висит портрет Рубенса с сыном. Считавшийся раньше за произведение самого великого фламандского художника, портрет этот принадлежит скорее всего кисти одного

из учеников мастера. Против него висит тканный портрет Екатерины II, изделие Петербургской шпалерной мануфактуры. Далее следует обратить внимание на шкафик для драгоценностей Аугсбургской работы конца XVII века, очень затейливый и изящный. На стелике „буль“ перед окном — терракотовая группа русского ваятеля начала XIX века Ивана Прокофьева — эскиз фонтана.

Из передней мы переходим в большую залу, одно из немногих помещений дворца, сохранившееся без изменений в том виде, какой ему придал Растрелли. Зала почти квадратная, и почти такая же в высоту, как и в ширину. На стенах, выкрашенных в желтовато-розовый тон, очень пышный, и вместе с тем легкий, белый лепной узор стиля рококо. Залу украшают огромные портреты: графа А. С. Строганова в костюме андреевского кавалера на фоне Казанского собора, писанный после его смерти Варнеком в 1814 году, и Александра I и его жены Елизаветы Алексеевны, французского художника Монье. Посреди залы мраморный бюст Екатерины II, работы французского скульптора Гудона (1773 года) и мраморные же статуи князя Якова Долгорукого, известного сподвижника Петра Великого, работы Козловского, и Румянцева-Задунайского, работы Рашета. Мебель екатерини-

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ского времени с малиновой обивкой стоит по стенам и перед окнами. Следует отметить, что потолок весь заполнен одной гигантской, отлично сохранившейся картиной, писанной, вероятно, известным итальянским декоратором Валериани и изображающей прибытие какого то мифологического героя (Энея?) на Олимп. Над шестью дверьми залы помещены картины неизвестного итальянского художника, может быть, того же Валериани, изображающие сцены из Энеиды. Следующая комната, так называемая „малая столовая", со стенами из искусственного мрамора, украшенная прелестными барельефами (Прокофьева?) на желтом фоне и живописными арабесками на потолке, является одним из лучших образцов классического стиля в России. Она меблирована соответственным образом; из мебели необходимо упомянуть очень изящный французский комодик середины XVIII века.

В последней из выходящих на Мойку комнат — гостиной, особенного внимания заслуживают большие гобелены, вытканные по картонам художника Ж.-Ф. де-Труа младшего в сороковых и пятидесятых годах XVIII века и изображающие эпизоды из мифа о Язоне. Большое количество бронзы (среди них произведения знаменитого француза Клодиона) расставлено на столах и шкапчиках. Посере-

дине стол французской работы XVIII века с японскими лаками и прекрасной бронзовой отделкой.

Вернувшись в переднюю, мы, пройдя через нее, входим в угловую комнату — большую столовую, отделанную, вероятно, по рисункам Воронихина. К сожалению, впечатление от этой большой, выдержанной в желтых тонах и украшенной полуколоннами, комнаты испорчено печами более позднего происхождения. В простенках, между колоннами, целый ряд картин, среди которых выделяются: большой пейзаж с фигурами голландского художника XVII века Питера Воувермана, прелестная картинка, изображающая любовную сцену, прекрасного французского художника начала XVIII века Антуана Ватто, „Мотальщица“ голландского художника Габриэля Метсю (особенно интересная, как одно из самых ранних произведений мастера, 1632 г.), большой портрет полководца, писанный великим венецианцем XVI века Тинторетто, и „Девочка“, копия с картины Рембрандта, сделанная известным английским живописцем XVIII века Джошуа Рейнольдсом.

Далее проходим в очень скромную, но привлекательную белую-переднюю, с белыми же барельефами. Отделку этой комнаты приписывали самому Растрелли. Очень хороший

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портрет строителя дворца висит тут же; портрет этот, приписываемый Ротари, скорее напоминает работы француза Токэ, жившего в России в пятидесятых годах XVIII века. Далее надо обратить внимание на аллегорическую картину неаполитанского художника Солимены (конец XVII и начало XVIII века) и прекрасный портрет Петра Великого, считающийся работой одного из ранних русских живописцев, Ивана Никитина. Голова Петра Великого из камня напоминает работы отца строителя дворца, скульптора Растрелли-старшего; два достоверных произведения этого превосходного мастера находятся тут же: вариант модели памятника Петру, стоящего перед Инженерным Замком, и маленький бронзовый Нептун (на столике направо).

Следующая комната „Зал Гюбера Робера" получила свое название от находящихся здесь шести больших картин этого известного французского художника конца XVIII века, произведения которого в большом количестве имеются в русских музеях, дворцах и особняках. Находящиеся в Строгановском дворце картины Робера были заказаны А. С. Строгановым специально для украшения этой комнаты, в которой они и ныне помещаются. Кроме архитектурных пейзажей французского мастера, в этой же зале хранятся: „Разру-

шенные храмы", две картины римского живописца первой половины XVIII века Паннини, большая аллегория неаполитанца Луки Джордано, „Святое Семейство" болонца Агостино Карраччи, и две картины венецианского художника XVIII века Маркезини. Следует еще отметить мраморные бюсты великих французов XVIII века Вольтера и Дидро, работы Гудона.

Смежная комната сплошь украшена превосходными копиями с фресок Рафаэлевских „лоджий", специально для нас изготовленными (по всей вероятности тем же Унтербергером, который сделал копии для Эрмитажной галереи), и вделанными в стены. В этом помещении собраны произведения античного искусства, а также скульптура времени Возрождения.

Из Рафаэлевской комнаты мы переходим в маленькую галерею, выходящую окнами во двор. Здесь развешена коллекция гр. П. С. Строганова, собранная в середине XIX века и состоящая из целого ряда выдающихся произведений ранних итальянских и нидерландских мастеров. Среди первых изображения Богоматери с Младенцем: великого умбрийца начала XV века Джентиле да Фабриано, раннего венецианца Бартоломео Виварини (подписная и датированная 1490 г.), ученика

Леонардо да Винчи ломбардца Джампетрино, Николо Алуно, Марко Белло и нескольких неизвестных мастеров. Среди итальянских картин необходимо далее упомянуть изображения в рост Богоматери и Св. Иоанна флорентийца второй половины XV века Якопо Селлайо. Среди произведений мастеров северных школ особенной достопримечательностью являются поколенные изображения мужчины и женщины Николаса Нейшателя, антверпенского мастера XVI века, жившего и работавшего в Нюрнберге. Далее вызывают большой интерес две картины неизвестных нам нидерландских мастеров середины XV века, относящихся к ближайшим последователям Рогира ван-дер-Вейдена: Богоматерь с Младенцем и Христос в терновом венце. Очень загадочна привлекательная маленькая картинка одного из нидерландских художников первой половины XVI века, изображающая Рождество Христово. Кроме указанных, крайне интересны два мужских портрета: один из них считается работой нидерландского живописца первой половины XVI века Антониса Мора, другой,—исключительного достоинства, приписывается Якобу Корнелису ван-Амстердам. В этом же покое расставлены прекрасные образцы итальянской мебели эпохи Возрождения. На шкапах размещена деревянная скульптура, итальянская

и немецкая. Прекрасна бронзовая модель статуи папы Григория XIV, работы скульптора Альгарди.

Пройдя обратно через Рафаэлевскую комнату, мы входим в малую библиотеку (одно время называвшуюся биллиардной), прелестную комнату, украшенную 12 небольшими колоннами и превосходными барельефами. Очень оригинален купол этой комнаты с галерейкой, по стенам которой находятся шкапы, приспособленные для размещения коллекции минералов. На стенах этого покоя висят портреты членов семьи Строгановых; следует указать, что портреты двух графинь писаны в конце XVIII века отличными портретистами: Виже-Лебрен и Лампи-старшим.

Из этой комнаты мы переходим в лучшее из помещений дворца: картинную галерею, отделанную по рисункам Воронихина. Чрезвычайно грандиозная по пропорциям, с изысканно-мелкими деталями и превосходными барельефами в полукругах над колоннами, галерея является бесспорно лучшим творением Воронихина и вполне достойна служить хранилищем тех сокровищ, которые в ней помещены с самых дней основания собрания. Группируя картины по школам, необходимо отметить среди итальянских картин следующие: громадную картину неаполитанского

мастера XVII века Луки Джордано „Битва кентавров с лапифами“, „Ариадну“ Фурини и „Аллегорию изобразительных искусств“ генуэзца Строцци. Одним из шедевров галереи является также „Святое Семейство“ Аньоло Бронзино, флорентийского мастера XVI века. Среди голландских картин выделяются: „Вид Гаарлема“ Якова Рейсдаля, „Морской вид“ Симона де-Влигера, первоклассная картина „Всадники“ Адриана ван-де-Вельде, прекрасный пейзаж со скотом Дирка ван-Бергена, внутренний вид церкви Эмануэля де-Витта и целый ряд портретов, среди которых замечательные женские портреты Говерта Флинка и Бартоломеуса ван-дер-Гельста. Фламандская школа представлена тремя великолепными портретами ван-Дейка; из них особенно хорош портрет дамы с девочкой. Из французов прекрасно представлен Пуссен двумя картинами: „Отдых на пути в Египет“ и „Вакханалия“, Клод Лоррен—аркадским пейзажем с танцующими пастухами и де-Труа очень эффектным „Похищением Прозерпины“. Наконец, в этой же галерее мы находим и три русские картины: этюд мужской головы Александра Иванова, „Игрока в мяч“ Карла Брюллова и „Нищего старика“ Шебуева. Среди произведений скульптуры упомянем одно из повторений „Амура“ Фальконэ и

„Триумф Екатерины II“ Тассара. Очень замечательны в галерее и некоторые другие предметы, в особенности французские богатые канделябры конца XVIII века, стоящие между колоннами.



Exhibit C - Russian With English Translation of a Publication 93a
Entitled "The Stroganov Place-Museum, A Brief Guide" [20]
(pp. 74a-93a)

Eighteenth Century French Art in the Stroganov Collection

(Bulletin of M. Louis Reau)

Two years ago, in publishing the "Catalogue of French Art in Russian Museums," I expressed the fear that my catalogue would in the near future be of only retrospective interest as a consequence of the massive sales to which the Soviet Government has had to resort, in order to finance its imports or to feed its propaganda. The reality exceeds the most pessimistic forecast. We witness today the real liquidation of the heritage of Catherine II and of the artistic inheritance of Russia. Having first been glutted by absorption of all the private collections and then weakened by multiple blood lettings, the Hermitage will soon be nothing but a memory.

During the first years of the Bolshevik regime, the Soviet Government fastidiously saved works of art and made them easily accessible to the masses. Some of the big Petersburg collections which were not incorporated in the Hermitage remained at their locations in the palaces, which had been transformed into "palace museums." This was the case with the Stroganoff collection, richest in Petersburg after that of Prince Iousoupov. The Stroganoff collection stayed intact

in one of the most magnificent baroque palaces at the Perspective Nevsky by the famous architect Rastrelli. One could almost believe that it was saved, when suddenly, two or three months ago, rumor spread that it was going to be sold en bloc. Though, at first such news may seem improbable, one has to consider the evidence: it has been learned that the collection has been transported to Berlin and that it will be sold by auction on the 12th and 13th of May.

The dispersion of this famous collection cannot leave us indifferent; and we should not remain inactive, for it is dedicated to a large extent to our French art of the eighteenth century. It was formed in Paris by Count Alexander Sergevitch Stroganov, a picturesque and philosophical noble Russian who lived for many years in close contact with our encyclopedists from whom he borrowed ideas without renouncing his prejudices. His two stays in Paris, from 1752 to 1754 and from 1770 to 1779, almost completely francicized him at least superficially. As Grimm wrote to Catherine II announcing Stroganov's return to Russia, "He left many friends here and he is sadly missed." To which Catherine answered, with some jealousy, "Stroganov is far from forgetting Paris, he talks about nothing else."

Count Stroganov claimed to be an educated patron and, in his foreword to the Catalogue of his collection, he quite frankly expressed his disregard for those whom he called

"the amateurs without love, the experts without knowledge." He established relationships not only with Diderot, Grimm and D'Alembert, but with all the fashionable artists - Houdon, Greuze, Hubert Robert - for whom he arranged orders and opened sources in Russia. In particular, it was due to his intervention that Houdon, from whom he ordered a colossal bust of Catherine II, and Hubert Robert whom he had paint the "Artificial Ruin of Tsarskoe Selo" from drawings and engravings, were introduced to the Empress of Russia. After having returned to Petersburg and having become Director of the Beaux-Arts, it was he who welcomed Madame Vigee-Lebrun to the Imperial Academy.

Thus, one can easily explain the importance which was attributed to French art in his palace on the Perspective Nevski.

The Soviets are passing off as part of the Stroganov collection a number of pictures coming from the Hermitage and other collections such as the Iousoupov. On the other hand, the German firm charged with the sale rejected some pictures from the Stroganov collection which, wrongly or rightly, seemed to be of an inferior quality or difficult to sell. This preliminary remark is necessary to warn those who might think, upon reading the catalogue, that the sale includes exclusively works of art of the Stroganov collection.

Having said this we will look at the main works of sculpture, paintings and decorative art which will be found in this sale of exceptional importance.

I - Sculpture

Our great school of eighteenth century French sculpture is represented by pieces of highest interest.

I am inclined to attribute to Lambert-Figisbert Adam rather than to Bouchardon as suggested by the catalogue, a clay model of a decorative fountain in terra cotta showing "Neptune Enlevant Anymone" in a conch carried by three tritons. This is a magnificent sample of Bernini-like sculpture which one likes to see under the shady avenues of plane trees in Aix-en-Provence. Quite naturally, one expects to find Falconet in a Russian collection set up at the time of Catherine II. Count Stroganov obtained a replica of "L'Amour Menacant" which I consider to be a studio work and which is certainly inferior to the magnificent sample in the Chouvalov collection which was confiscated by the Hermitage. The most interesting piece is a clay model in terra cotta of the "Milion de Crotone" devoured by a lion; this is obviously a search for official acceptance by the artist and there is good reason to compare it with the study of lions initialed by the artist and dated 1747, which was discovered by Mr.

Jacques de Faaint-Pierre. The composition is completely different from the definitive work. The athlete, whose hand is stuck in the crack of a trunk, has fallen back on the lion which bites his thigh. He makes a desperate effort with his remaining free hand to push back the wild beast fighting against its prey. The group is, unfortunately, arranged in a square, which is the reason why Falconet discarded this first attempt. But the expression is intensely dramatic and one has seldom translated in a better way the culminating point of physical pain.

Clodion is represented by two charming figures in terra cotta: a "Vestale" and a "Joueuse de Flute," one of which is signed "Clodion in Rome, 1765."

A too little known sculptor of Provence, Jean - Joseph Foucou, whose works were sometimes confused with those of Clodion, signed a charming marble bust of a young lady, dated 1771. This is a very charming work of rare mastry which one would like to see entering our national museums.

A bust of the young Count Paul Stroganov which I propose to attribute to Tassaert seems weak compared to two busts by Houdon representing Voltaire and Diderot. In fact, the Voltaire with bald head in the antique style seems to be of suspect authenticity because of its date of

1775. This is out of the question, for Houdon did not know the philospher of Ferney until shortly before his death at the time of his triumphant trip to Paris in 1778. On the other hand, the Diderot which is signed in all letters: M. DIDEROT MADE IN 1773 BY HOUDON, cannot be questioned and, in my opinion, it is of a higher quality than the bust at Versailles. On the plinth of the small pedestal, these trashy verses are engraved:

"He had great friends and some
jealous skirts.

The sun pleases the eagle and
offends the owl."

[This article appears in the Bulletin of the Society of the History of French Art, published in 1931 in Paris by Librairie Armand Colin.]

100a
[7]

# BULLETIN

DE LA SOCIÉTÉ

DE

# L'HISTOIRE DE L'ART FRANÇAIS

RECONNUE D'UTILITÉ PUBLIQUE

PAR DÉCRET DU 20 MAI 1927

ANNÉE 1931




LIBRAIRIE ARMAND COLIN
103, Boulevard Saint-Michel, PARIS (V^e^)
Tél. Odéon 35.45, 37.33, 37.79

1931

Ce vestige de la forme primitive de l'*Enseigne*, transformée par la suite en « tableau de cabinet », est une preuve absolue d'authenticité, plus démonstrative que toutes les considérations tirées de l'histoire ou de la technique qui ont été alléguées jusqu'à présent.

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## L'ART FRANÇAIS DU XVIII^e^ SIÈCLE DANS LA COLLECTION STROGANOV.

*(Communication de M. Louis Réau.)*

En publiant, il y a deux ans, le *Catalogue de l'art français dans les Musées russes*, j'exprimais la crainte que cet inventaire fût condamné à bref délai à ne plus présenter qu'un intérêt rétrospectif par suite des ventes massives d'œuvres d'art auxquelles se trouve acculé, pour financer ses importations ou alimenter sa propagande, le gouvernement des Soviets. La réalité dépasse les prévisions les plus pessimistes : c'est à une véritable liquidation de l'héritage de Catherine II, du patrimoine artistique de la Russie, que nous assistons aujourd'hui, et d'ici quelques années le Musée de l'Ermitage, d'abord engorgé par l'absorption de toutes les collections privées, puis anémié par de multiples saignées, ne sera plus qu'un souvenir.

Pendant les premières années du régime bolcheviste, le gouvernement des Soviets avait mis une sorte de coquetterie à sauvegarder les œuvres d'art, à les rendre plus facilement accessibles aux masses populaires. Quelques-unes des grandes collections pétersbourgeoises qui n'avaient pu être incorporées à l'Ermitage étaient restées en place, dans les palais qu'elles occupaient, transformés en *palais-musées*.

C'était le cas de la *Galerie Stroganov*, la plus riche de Pétersbourg après celle du prince Iousoupov, qui était demeurée intacte dans un des plus magnifiques palais de style baroque de la Perspective Nevski, construit par le célèbre architecte Rastrelli. On pouvait la croire sauvée, lorsque brusquement, il y a deux ou trois mois, le bruit

courut qu'elle allait être vendue en bloc. Si invraisemblable que parût au premier abord une pareille nouvelle, il fallut bien se rendre à l'évidence : on apprit que la collection était transportée à Berlin et qu'elle allait passer aux enchères les 12 et 13 mai.

Cette dispersion d'une collection célèbre ne saurait nous laisser indifférents et ne devrait pas nous laisser inactifs : car elle est consacrée en majeure partie à notre art français du XVIII^e^ siècle. C'est à Paris qu'elle a été formée par le comte Alexandre Sergevitch Stroganov, type pittoresque de boïard philosophe qui vécut de longues années dans l'intimité de nos encyclopédistes, auxquels il avait emprunté leurs idées sans abdiquer ses préjugés. Ses deux séjours à Paris, de 1752 à 1754 et de 1770 à 1779, l'avaient presque entièrement francisé, du moins à la surface. « Il a laissé ici beaucoup d'amis et beaucoup de regrets », écrit Grimm à Catherine II en annonçant son retour en Russie. A quoi Catherine répond avec une pointe de jalousie : « Stroganoff n'a garde d'oublier Paris ; il n'a que cela à la bouche. »

Le comte Stroganov avait la prétention d'être un mécène éclairé et, dans la préface qu'il écrivit pour le catalogue de sa galerie, il exprime ouvertement son dédain pour ceux qu'il appelle « les amateurs sans amour, les connaisseurs sans connaissances ». Il était entré en rapports non seulement avec Diderot, Grimm et d'Alembert, mais avec tous les artistes à la mode : Houdon, Greuze, Hubert Robert, auxquels il ne ménagea pas les commandes et ouvrit des débouchés en Russie : c'est notamment par son intermédiaire que Houdon, auquel il commanda un buste colossal de *Catherine II*, et Hubert Robert, auquel il fit peindre, d'après des dessins ou des gravures, la *Ruine artificielle du parc de Tsarskoe Selo*, se firent connaître de l'impératrice de Russie. Devenu après son retour à Pétersbourg directeur des Beaux-Arts, c'est lui qui accueillit M^me^ Vigée-Lebrun à l'Académie impériale.

On s'explique ainsi aisément la place prépondérante qu'occupait l'art français dans son palais de la Perspective Nevski.

101a
[8]

* * *

Sous le couvert de la Collection Stroganov, les Soviets font passer en vente un certain nombre de tableaux provenant de l'Ermitage ou d'autres galeries privées, telles que la Collection Iousoupov. D'autre part, la maison allemande chargée de la vente a rejeté certaines peintures du fonds Stroganov qui, à tort ou à raison, lui ont paru d'une qualité inférieure ou d'une vente difficile. Cette remarque préalable est nécessaire pour mettre en garde ceux qui pourraient croire, à la lecture du catalogue, que la vente englobe toutes les œuvres d'art de la Collection Stroganov et ne contient que celles-là.

Ceci dit, passons en revue les principales œuvres de sculpture, de peinture, d'art décoratif qui figurent dans cette vente d'une importance exceptionnelle.

## I. — Sculpture.

Notre grande école de sculpture française du XVIII[e] siècle est représentée par des pièces du plus haut intérêt.

Je serais tenté d'attribuer à Lambert-Sigisbert Adam plutôt qu'à Bouchardon, comme le suggère le catalogue, une maquette de fontaine décorative en terre cuite représentant *Neptune enlevant Amymone* dans une conque surportée par trois tritons. C'est un magnifique morceau de sculpture berninesque qu'on aimerait voir dressé sous les allées ombreuses de platanes d'Aix-en-Provence.

On s'attend tout naturellement à rencontrer Falconet dans une collection russe formée à l'époque de Catherine II. Le comte Stroganov s'était procuré une réplique de l'*Amour menaçant*, que je considère comme une œuvre d'atelier et qui est en tout cas inférieure au magnifique exemplaire de la Collection Chouvalov, confisqué par l'Ermitage. La pièce la plus intéressante est une maquette en terre cuite du *Milon de Crotone* dévoré par un lion ; c'est évidemment une recherche pour le morceau de réception de l'artiste qu'il y a lieu de rapprocher de l'étude de lions signée des initiales de l'artiste et datée de 1747, découverte par M. Jacques de Saint-Pierre. La composition

est tout à fait différente de l'œuvre définitive : l'athlète, dont la main est coincée dans la fente d'un tronc d'arbre, est renversé sur le lion qui lui mord la cuisse et s'efforce désespérément de la seule main qui reste libre d'écarter le fauve acharné contre sa proie. L'agencement du groupe qui se présente en équerre n'est pas très heureux et c'est pourquoi Falconet a écarté cette première pensée ; mais l'expression est intensément dramatique et on a rarement mieux traduit le paroxysme de la douleur physique.

Clodion est représenté par deux charmantes figures en terre cuite : une *Vestale* et une *Joueuse de flûte*, dont l'une est signée : Clodion à Rome, 1765.

Un sculpteur provençal, trop peu connu, Jean-Joseph Foucou, dont les œuvres ont été parfois confondues avec celles de Clodion, a signé un charmant buste en marbre de jeune femme, daté de 1771 : c'est une œuvre d'un grand charme et d'une rare maîtrise qu'on souhaiterait voir entrer dans nos Musées nationaux.

Un buste du jeune comte Paul Stroganov, que j'ai proposé d'attribuer à Tassaert, paraît faible en comparaison des deux bustes de Houdon représentant Voltaire et Diderot. A vrai dire, le *Voltaire*, qui est du type chauve, à l'antique, me paraît d'une authenticité suspecte à cause de sa date de 1775 qui est inadmissible, puisque Houdon n'a connu le philosophe de Ferney qu'à la veille de sa mort, lors de son voyage triomphal à Paris en 1778. En revanche, le *Diderot* qui est signé en toutes lettres : *M. Diderot fait en 1773 par Houdon*, ne saurait être contesté et il est à mon avis d'une qualité très supérieure à l'exemplaire de Versailles. Sur la plinthe du piédouche sont gravés ces vers de mirliton :

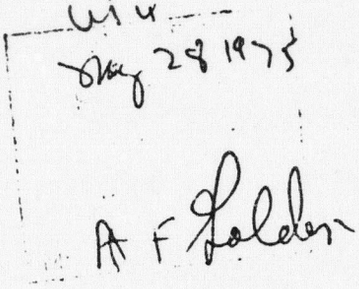
Il eut de grands amis et quelques bas jaloux.
Le soleil plaît à l'aigle et blesse les hiboux.

## II. — Peinture

Parmi les tableaux de la vente Stroganov, quelques-uns remontent jusqu'au XVII^e^ siècle : ce sont deux Poussin : une *Bacchanale* provenant de l'Ermitage et le *Repos pen-*



Exhibit D - French with English Translation of an Article By M. Louis Reau (pp. 94a-102a) 102a [9]



UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - - - - - - - - - - - - - - - - - - - X

GEORGE STROGANOFF-SCHERBATOFF,

Plaintiff,

--against--

CHARLES B. WRIGHTSMAN and
JAYNE WRIGHTSMAN,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - X

74 CIV. 5750
(DBB)

ANSWER TO INTERROGATORIES

Plaintiff answers the interrogatories heretofore served on him by defendants, as follows:

1. Plaintiff contends that he is a descendant of Count Alexander Stroganoff, but not the heir to his property rights.

2. Plaintiff does not contend that the bust of Diderot by Houdon was the property of Count Alexander Stroganoff in 1931, but is not qualified to answer the hypothetical legal question.

3. Plaintiff does not contend that he is entitled to possession of said bust by reason of his familial relationship to Count Alexander Stroganoff.

4. Plaintiff does not contend that said bust was confiscated, removed or otherwise taken from the possession of Count Alexander Stroganoff by the Union of Soviet Socialist Republics (USSR).

5. Not applicable.

6. Not applicable.

7. Plaintiff contends that the bust was sold on or about May 13, 1931 at an auction sale in Berlin, Germany pursuant to the direction of the USSR.

8. Not applicable.

9. Plaintiff does not contend the confiscation, removal or other taking was a conversion of the property of Count Alexander Stroganoff.

10. Not applicable.

11. Not applicable.

12. (a) Defendants converted the bust shortly after November 21, 1974 by refusing to return it to plaintiff pursuant to his written demand therefor dated November 21, 1974.

(b) The demand therefor was made in

New York County

(c) Defendants converted the same by

(d) their refusal to turn it over to plaintiff

(e) shortly after November 21, 1974

13. A copy of plaintiff's communication to defendants is attached hereto and made a part hereof.

Sworn to before me this
day of May, 1975.

George Stroganoff-Scherbat

Lyman Stansky
667 Madison Avenue
New York, N. Y. 10021

November 21, 1974

Dear Sir and Madame:

I have been instructed by Mr. George Stroganoff-Scherbatoff, owner of the bust of Diderot by Houdon described in Catalogue 2043 of Rudolph Lepke's Kunst-Auctions-Huase, No. 225, to make demand upon you for its immediate return to him.

The undersigned has been authorized to receipt and give full acquittance therefor on its delivery at this office.

Compliance by December 6, 1974 with this demand is hereby requested.

Very truly yours,

Lyman Stansky

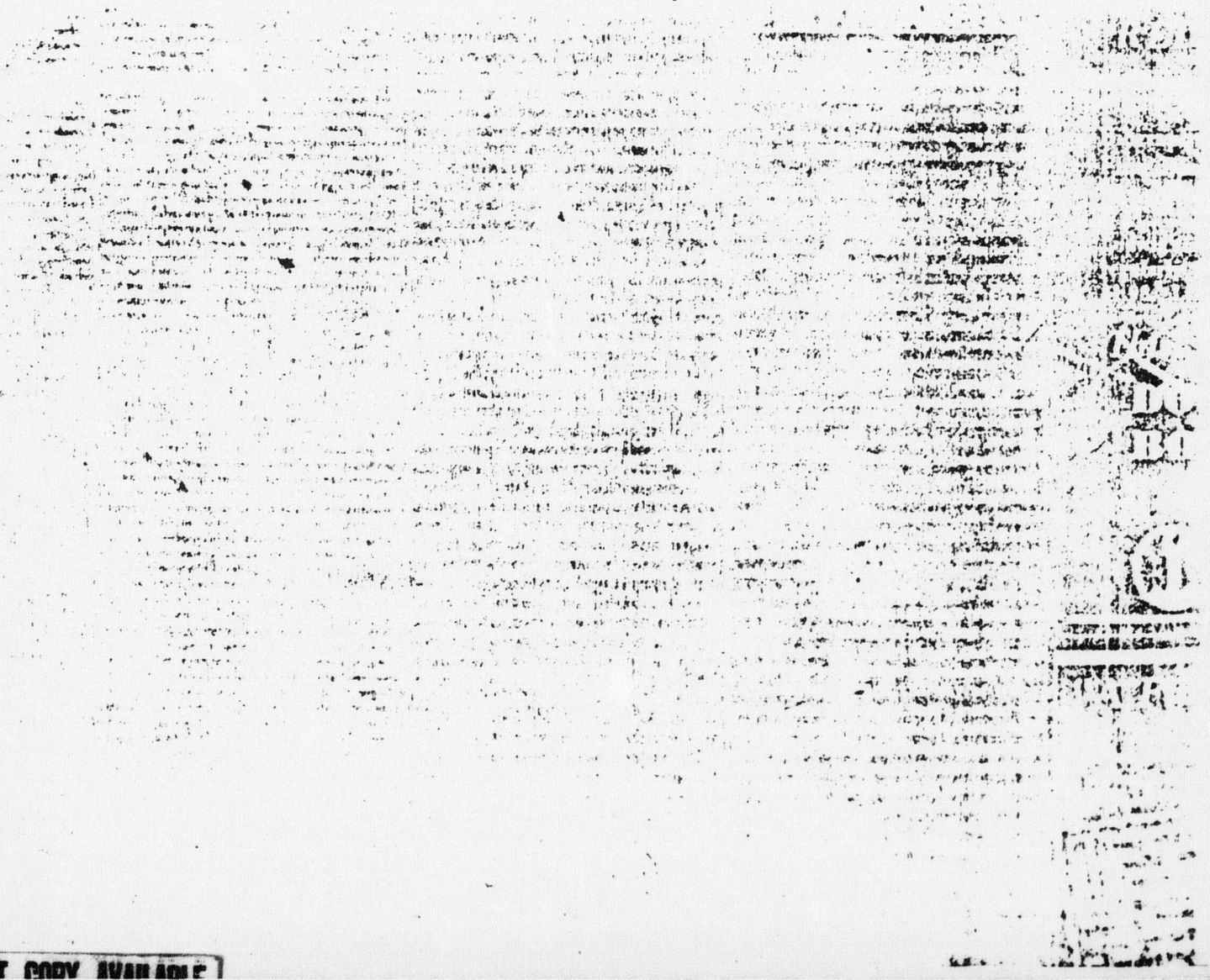
(Certified Mail,
Return Receipt Requested)

Mr. and Mrs. Charles Wrightsman
820 Fifth Avenue
New York, N.Y. 10021

EXHIBIT F - COPY OF AN ARTICLE IN THE N.Y. HERALD TRIBUNE MAY 13, 1931 (Illegible)







BEST COPY AVAILABLE

EXHIBIT G - RUSSIAN WITH ENGLISH TRANSLATION OF DECREE NO. 245 OF THE ALL RUSSIAN CENTRAL EXECUTIVE COMMITTEE AND OF THE COUNCIL OF PEOPLE'S COMMISSARS DATED MARCH 8, 1923 (pp. 108a-113a)



DECREES OF THE ALL-RUSSIAN CENTRAL EXECUTIVE COMMITTEE AND OF THE COUNCIL OF PEOPLE'S COMMISSARS

245 Concerning the inventory and registration of objects of art and antiques.

In addition to the decree concerning the inventory and registration of objects of art and antiques of October 5th, 1918 (Collection of Statutes 1918, No. 73, page 794). The All-Russian Central Executive Committee and the Council of People's Commissars decrees:

1. In order to single out objects of exceptional museum importance and subject to the preservation by the State, to conduct the re-registration of the collections and single monuments of art and antiquity, inventoried by the Central Board of scholarly institutions of the academic center of the People's Commissariat of Education in charge of the museum section of the People's Commissariat of Education, as well as to determine for the objects which have an exceptional museum importance, a permanent State registration and inventory, regardless under what authority and ownership these objects would be.

Annotation. The sequence of the registration and inventory is determined according to the instruction of the People's Commissariat of Education.

2. The re-registration and the permanent State registration and inventory of objects indicated in Article 1 are made according to the decree of the People's Commissariats of Education in charge of the museum section by especially formed, for this purpose, scholarly art expert commissions of the museum section; consequently according to the State safeguarding of objects of museum significance, their owner is provided with special safeguarding certificates from the section of the museums of the People's Commissariat of Education.

Annotation. For objects designated as being of museum significance inventories are entered on special cards to be issued together with the safeguarding certificates.

3. Objects which after the re-registration will be designated as having no museum significance, are taken off the inventory and are put at the disposal of the owners.

4. Collections and single monuments of art, antiques and folklore of museum significance left on the inventory of the museum section after the re-registration are under the control of the State, consequently

(a) the export and sale abroad of the aforesaid objects is forbidden.

(b) the transfer from one owner to another one

and generally any removal are subject to an obligatory registration of the museum section and of its local organs.

(c) at a sale of aforesaid objects the museum section has the priority to acquire them at prices determined by a special expert commission of the museum section (Art. 2).

(d) the museum section is entitled to use collections and single objects for exhibitions and publishing.

5. Objects of art, antiques and folklore which are in museums and depositories, as having become a part of the museum collections, and safeguarded by State means, are recognized as the property of the State.

6. In the interest of successful enactment of the aforementioned decree, the museum section is entrusted with:

(a) control of the trade of antique-art objects on business premises, auction rooms and so on.

(b) establishing rules of auction sales of antique-art objects, and the trade of these objects.

Signed: President of All-Russian Central Executive Committee M. Kalinine

Deputy-President of the Council of People's Commissars L. Kamenev

Secretary of the All-Russian Central

Executive Committee T. Sapronov

Published in No. 58 of "The News of All-Russian Central Executive Committee of Soviets," March 16th, 1923

112a
[5]

R.S.F.S.R. Sobranie Uzakonenii i Rasporiazhenii
Otdel Pervyi Jan.-June 1923
KR 2101



# Декреты Всероссийского Центрального Исполнительного Комитета и Совета Народных Комиссаров.

## 245. Об учете и регистрации предметов искусства и старины.

В дополнение декрета об учете и регистрации предметов искусства и старины от 5 октября 1918 года (Собр. Узак. 1918 г. № 73, ст. 794), Всероссийский Центральный Исполнительный Комитет и Совет Народных Комиссаров п о с т а н о в л я ю т:

1. Для выделения предметов, имеющих исключительно музейное значение и подлежащих государственному охранению, произвести перерегистрацию собраний и отдельных памятников искусства и старины, состоящих на учете Главного Управления научных учреждений академического центра Народного Комиссариата Просвещения по музейному отделу Народного Комиссариата Просвещения, а равно установить для предметов, имеющих исключительно музейное значение, постоянную государственную регистрацию и учет, в чьем-бы ведении и обладании такие предметы не находились.

Примечание. Порядок регистрации и учета устанавливается инструкцией Народного Комиссариата Просвещения.

2. Проведение перерегистрации и постоянной государственной регистрации и учета предметов, указанных в ст. 1, производится распоряжением Народного Комиссариата Просвещения по музейному отделу специально на то образованными научно-художественными экспертными комиссиями музейного отдела в силу чего, в порядке государственного охранения предметов музейного значения, владелец их получает особые охранные свидетельства Народного Комиссариата Просвещения по отделу музеев.

Примечание. На предметы, признанные представляющими музейное значение, составляются заносимые в особые карточки описи, подлежащие выдаче вместе с охранными свидетельствами.

3. Предметы, которые после перерегистрации будут признаны не представляющими музейного значения, снимаются с учета и предоставляются в распоряжение владельцам.

4. Собрания и отдельные памятники искусства, старины и народного быта, имеющие музейное значение, оставленные после перерегистрации на учете музейного отдела, находятся под контролем государства, в силу чего:

а) воспрещается вывоз и продажа означенных предметов за-границу;

б) переход их от одного владельца к другому и вообще всякое их перемещение подлежит обязательной регистрации музейного отдела и его органов на местах;

в) при продаже означенных предметов музейному отделу предоставляется право преимущественной покупки по ценам, устанавливаемым специальной экспертной комиссией музейного отдела (ст. 2);

г) музейному отделу предоставляется право использования собраний и отдельных предметов для выставок и изданий.

Exhibit G - Russian With English Translation of Decree No. 245 of the All Russian Central Executive Committee and of The Council of People's Commissars Dated March 8, 1923 (pp. 108a-113a)





5. Предметы искусства, старины и народного быта, находящиеся в музеях и хранилищах, как вошедшие в музейный фонд и охраняемые государственными средствами, признаются государственным достоянием.

6. В целях успешного проведения в жизнь означенного декрета на музейный отдел возлагается: а) контроль торговли антикварно-художественными предметами в торговых помещениях, аукционных залах и т. п., б) установление правил об аукционной продаже антикварно-художественных предметов и о торговле таковыми предметами.

Подписали: Председатель Всероссийского Центрального Исполнительного Комитета М. Калинин.
Заместитель Председателя Совета Народных Комиссаров Л. Каменев.
Секретарь Всероссийского Центрального Исполнительного Комитета Т. Сапронов.

8 марта 1923 года.

Распубликован в № 58 Известий Всероссийского Центрального Исполнительного Комитета Советов от 16 марта 1923 года.

## 246. Об учреждении Главного Концессионного Комитета при Совете Народных Комиссаров.

В отмену декрета Совета Народных Комиссаров от 4-го апреля 1922 года об учреждении Главного Комитета по делам о концессиях и акционерных обществах (Собр. Узак. 1922 года № 28, ст. 320) и постановления Совета Труда и Обороны от 30 июня 1922 года (Собр. Узак. 1922 г. № 42, ст. 509), Всероссийский Центральный Исполнительный Комитет и Совет Народных Комиссаров **постановляют:**

1. Учредить взамен Главного Комитета по делам о концессиях и акционерных обществах при Совете Труда и Обороны—Главный Концессионный Комитет (Главконцесском) при Совете Народных Комиссаров на следующих основаниях:

2. Главный Концессионный Комитет состоит из председателя и 4-х членов, назначаемых Советом Народных Комиссаров.

3. Главному Концессионному Комитету предоставляется право приглашать на заседания с совещательным голосом представителей ведомств и сведущих лиц, а равно и уполномоченных союзных республик.

4. К ведению Главного Концессионного Комитета относится:

а) общее руководство всем делом допущения иностранного капитала к промышленной, торговой и иной хозяйственной деятельности на территории Р. С. Ф. С. Р. и союзных с ней советских республик;

б) руководство переговорами о заключении всякого рода концессионных договоров, допускающих изъятие из общих законов;

в) рассмотрение, при участии представителей заинтересованных ведомств, всех проектов концессионных договоров (п.п. «а» и «б»), разработанных согласно ст.ст. 6, 7 и 8 настоящего постановления, в том числе и проектов концессионных договоров на коммунальные предприятия, представляемых в Главный Концессионный Комитет на основании особого постановления (примечание 3 к ст. 6);

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - x

GEORGE STROGANOFF - SCHERBATOFF, :

Plaintiff, : 74 Civ. 5750 (DBB)

-against- :

CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN, : AFFIDAVIT

Defendants. :

- - - - - - - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

VLADIMIR VISSON, being duly sworn deposes and says:

1. I reside at 315 East 68th Street, New York, New York.

2. I have been employed by Messrs. Davis Polk & Wardwell, attorneys for defendants, to translate the following documents from Russian into English:

a. The Stroganov Palace - Museum - A Brief Guide, Petersburg, 1922.

b. Decree of the Soviet Government of October 5, 1918, entitled "Concerning Registration, Inventory and Preservation of Works of Art and Antiques Owned by Private Persons, Organizations, and Institutions."

c. Portions of The Hermitage During 200 Years (1764-1964), published by Soviet Artist, Leningrad Moscow.

d. Decrees of the All Russian Central Exec. Comm. and of the Council of People's Commissars.

3. I read and speak the Russian language fluently because it is my native language. My knowledge of art his-

tory derives from my employment for approximately 30 years as Director of Exhibitions at Wildenstein & Company in New York City.

4. I certify that the translations I have made, copies of which are attached hereto, are complete and accurate.

Vladimir Visson

Vladimir Visson

Sworn to before me this
30th day of July, 1975.

Daniel F. Houlihan

Notary Public

DANIEL F. HOULIHAN
Notary Public, State of New York
No. 31-1868730
Qualified in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| GEORGE STROGANOFF-SCHERBATOFF, Plaintiff, | : | 74 Civ. 5750 (DBB) |
| -against- | : | |
| CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN, Defendants. | : | AFFIDAVIT |

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

JOHANN WILLE, being duly sworn deposes and says:

1. I reside at 211 Thompson Street, New York, New York.

2. I am associated with the law firm of Davis Polk & Wardwell attorneys for defendants. Acting at their request, I have translated from French into English an article by M. Louis Reau entitled, "Eighteenth Century French Art in the Stroganov Collection." This article appeared in the Bulletin of the Society of the History of French Art, published in Paris in 1931 by Librairie Armand Colin.

3. I speak and read French fluently because it is the second language of Switzerland, where I was born and have lived most of my life. I have spoken the language since childhood. I also speak and read English fluently, having studied the language for many years and having attended law school in the United States.

4. I certify that the translation I have made, a copy of which is attached hereto, is complete and accurate.

Johann Wille

Sworn to before me this
16th day of October, 1975

JON YARD ARNASON
Notary Public, State of New York
No. 31-4610458
Qualified in New York County
Commission Expires March 30, 1977

AFFIDAVIT OF GEORGE STROGANOFF-SCHERBATOFF DATED DECEMBER 1, 1975 (pp. 118a-127a)



UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - - - - - - - - - - - - - - - - - - - - X

GEORGE STROGANOFF-SCHERBATOFF,

Plaintiff,

--against--

CHARLES B. WRIGHTSMAN and
JAYNE WRIGHTSMAN,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - X

74 CIV. 5750
(DBB)

AFFIDAVIT IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

GEORGE STROGANOFF-SCHERBATOFF, being duly sworn, deposes and says, I am the plaintiff and submit this affidavit in opposition to defendants' motion for summary judgment. I am advised that the law on which it is based does not apply to the facts of this case.

I have read the motion papers and the exhibits. Born in London, I am as fluent in English as in Russian. I am a graduate of Oxford University, enlisted in The United States Navy during World War II, and was honorably discharged as Commander. As I understand it, defendants base their application on the Act of State doctrine, which necessitates proof that after the Diderot had been confiscated while on

Russian territory by the Russian government, then only could the USSR pass good title in Berlin.

This is a suit for the conversion of a bust of Diderot by Jean Antoine Houdon. I do not know when or from whom defendants acquired it, but I verily believe that they did so from or through a person or persons who had bought it at auction on May 13, 1931, in Berlin, Germany, where it fetched 45,000 German marks,which I believe was then the equivalent of $11,250. I lost track of this object until late in 1974 when I saw it with defendants' names on it, at the Metropolitan Museum of Art in New York. On November 21, 1974 I made written demand on the defendants for its return to me. After this action was brought I was apprised of defendants' claim that they had donated it to the museum in 1974. I thereupon made written demand upon, and thereafter sued the museum (75 CIV. 3174). This court ordered consolidation of both actions for trial.

The Diderot bust was part of the Stroganoff Collection, and was in the Stroganoff Palace until at least 1919. I lived in the palace until November 1918 and did not leave Russia until sometime in 1919. The premises had

not been turned into a museum by then. The main floor was occupied by the Spanish consulate, and the upper two stories were a Sailor's Club. I do not know what happened to the Diderot between the time I last saw it and when it was sold at auction in Berlin on May 13, 1931.

The collection had been started by my great-great-grandfather, Count Alexander Stroganoff (1730-1811), the first president of the Academy of Arts of Russia. The "Bolshevik (Lenin) Revolution" occurred on November 7, 1917. The November 20, 1920 decree cited by the defendants (Sobranie Uzakonenii RSFSR, Collection of Laws RSFSR, No. 11, March 18, 1921, Item 111) confiscated personal property of persons who had "fled" the revolution. My uncle, Count Sergei Stroganoff, then owner of the Diderot had not "fled" Russia. He had been living continuously in France since 1898.

Imperial decrees of 1817 and 1847 subjected all Stroganoff personal and real property to primogeniture entailment. No part could be alienated from the male line of the Stroganoff family, and if that failed, from the female line. When my uncle died on May 1, 1923, in France, his sister, my mother, then a resident of France, became the owner of the Stroganoff Collection and remained such owner

until her death in 1944. I succeeded to her rights therein and these are the rights that I am now attempting to enforce and which defendants claim are invlaid on the basis of the Act of State doctrine.

If I understand the Wrightsmans' position it is that, regardless of the fact that they, and ultimately in view of the consolidated actions, the museum, must necessarily base validity of their title to a sale outside the territorial limits of the USSR, they contend that the confiscation took place in Russia by the USSR sometime between 1917 and 1931; that regardless of my uncle's not having been a refugee from the Bolsheviks, and regardless of the legal invalidity of taking possession and title in Russia by the USSR, the transportation to Berlin was merely that of an object belonging to the USSR.

The absence of a Wrightsman affidavit to support this position may be of some significance. This is not the only piece of Stroganoff art that found its way into Wrightsman hands. Their pre-trial depositions had been adjourned because of their absence from New York. It was to have been held just when these papers were served.

When and from whom had they acquired the Diderot? How did their bill of sale read? Was there a disclaimer of warranty of title, similar to Lepke's disclaimer of May 12, 1931? When did they first see the catalogue stating that the sale was on the authority of "the Commercial Organization"?

First they claim as a "material fact as to which... there is no genuine issue to be tried? (Defendants' Rule 9(g) Statement) that by the fall of 1919 the Soviet government had taken possession of the Stroganoff Palace and its contents, and had organized a State Museum therein (#4), and that that constituted the confiscation in Russia.

Defendants' evidence to prove facts that would make application of the Act of State doctrine available as a defense, are contained in defendants' Exhibit A to G. The proof falls short of the necessary facts.

Exhibit A is my June 19, 1974 deposition in the Voltaire case (74 CIV. 3809-DBB). They claim that I swore that the USSR had sold it in 1931. The transcript does not bear this out. It reads:

"Q. Was that auction conducted by the Union of Socialistic Soviet Republic, do you know?
A. I don't know.....

"Q. Do you know where the collection had been kept prior to 1931?
A. No.

Q. When you say no, does that mean that you do not know at any time prior to 1931 where the collection was kept?
A. I knew until I left Russia in 1919. In our house. In the Stroganoff house in Petrograd." (page 4).

Exhibit B is two pages of the Lepke 1931 catalogue. In the smallest letters on the title page, we read that this collection was being sold "Im Auftrag der Handelsvertretung der Union der Socialistischen Sowjet-Republiken", which I understand to mean "By Order of the Commercial Representation of the USSR". There is no attempt to further identify the CR. For all that appears, it may be the equivalent of the U.S. Chamber of Commerce, or some other non-governmental organization. If the U.S. Secretary of Commerce were involved in a like situation, would not a litigant in a foreign jurisdiction be required to cite apposite statutes to prove that he had been authorized ~~and~~ and empowered to act for the government?

Such showing would seem to have been particularly appropriate in the light of defendants' Exhibit G, an alleged Russian decree of 1923, reading in part:

"4. Collections and single monuments of art, antiques and folklore of museum significance left on the inventory of the museum section after the re-registration are under the control of the state, consequently:

"(a) the export and sale abroad of the aforesaid objects is forbidden. (emphasis supplied)".

This aspect of the presentation is to say the least, ambiguous. Assuming arguendo that these were valid decrees, when and how was the prohibition lifted, so as to make the Commercial Representation's 1931 sale in Berlin of the Diderot, lawful? Or was the CR acting on its own, in violation of USSR law?

Exhibit C is an alleged 1922 "Brief Guide" written "upon the instruction of the State Museum Fund" by the alleged curator.

The Wrightsmans' translation reads that "at the suggestion of the Section of Museums and Safeguarding of Treasures of Art" the staff "proceeded to install a museum in the Stroganov (sic) Palace". The word "ustroistvii" does not mean "to install", but "to arrange". In any event, nowhere is it claimed that that "suggestion" resulted in the arrangement, nor are we informed of the legal consequences of the installation, if it took place, nor of the legal status under USSR law of the "Section of Museums, etc.". The Metropolitan Museum in New York is not owned by the U.S. government, but the National Museum in Washington, a Mellon gift, is.

There is nothing in this exhibit that indicates that it was an act of the USSR within its territory. It gives a very interesting account of the history of the Stroganoff Collection, among others, and that parts were shifted from Leningrad (then Petrograd) to Moscow from time to time and back again and to the Hermitage Museum in Petrograd, but there is no showing that there was a government appropriation of the contents at any time between 1917 and 1931.

Exhibit D appears to be a general dissertation by a Frenchman, writing in France in 1931, deploring the projected 1931 sale of the Stroganoff Collection in Berlin. He states that "Some of the big Petersberg collections which were not incorporated in the Hermitage remained at their locations in the palaces, which had been transformed into 'palace museums'", but he fails to give the sources of his information, nor does he claim, for whatever it may be worth, that the Stroganoff Collection was the property of the USSR.

Exhibit E is my answer to an interrogatory:

> "7. Plaintiff contends that the bust was sold in or about May 13, 1931 at an auction sale in Berlin, Germany pusuant to the direction of the USSR.".

This should be corrected by the insertion of the words after the word "direction", "of the Commercial Organization" Defendants' Exhibit B so states. The omission was inadvertent.

Exhibit F appears to be a copy of newspaper reports of my mother's objections to the Lepke sale, on the ground that the USSR had illegally confiscated her property. This would not be the first time that the aggrieved has mistaken the identity of the transgressor. My mother was then living in France, and did not go to Berlin to the sale. She did not know that the Commercial Organization, not the USSR, had ordered the sale. By Exhibit B, defendants prove that she was blaming the wrong entity. To transform her protest into an admission against interest to defeat my claim, seems rather farfetched and fairly untenable.

Exhibit G has been referred to in the discussion of Exhibit B above. It should be noted that the legal existence or extent of power delegated by the USSR to the "All Russian Central Executive Committee and the Council of People's Commissars" is not presented.

It is concerned with "registration and inventory"

of works of art "according to the instruction of the People's Commissariet of Education". And who is that? That is the document that contains the clause "(a) the export and sale abroad of the aforesaid objects is forbidden (Defendants' translation, page 2). There is nothing in it that indicated that it applied to the Stroganoff collection.

The conversion of which I complain did not take place within the territory of the USSR. No part of Berlin was then under the control of the USSR. 130a

In this connection, it may be of interest to remember that in the 1950's the USSR brought the Shukin Collection to Paris, but advertised it as the USSR Collection. When the Shukin family in Paris threatened suit, the paintings were whisked back to Russia in 24 hours. Years later, after the Soviets had made their peace with the Shukin family, they exhibited the collection in Bordeaux.

The motion should be denied.

Sworn to before me
this 1st day of December, 1975 ) (s) George Stroganoff-Scherbatoff

CATHERINE NARDIELLO
Commissioner of Deeds, City of New York
N. Y. Co. Clks. No. 8, Reg. No. 0-N-12
Commission Expires Jan. 1, 1976

SUPPLEMENTAL AFFIDAVIT OF JOHANN WILLE DATED DECEMBER 5, 1975 (pp. 128a-132a)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEORGE STROGANOFF-SCHERBATOFF,

Plaintiff,

-against-

CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN,

Defendants.

74 Civ. 5750 (DBB)

SUPPLEMENTAL AFFIDAVIT

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

JOHANN WILLE, being duly sworn deposes and says:

1. I reside at 211 Thompson Street, New York, New York.

2. I am associated with the law firm of Davis Polk & Wardwell, attorneys for defendants. Acting at their request, I have translated from German into English an excerpt from "Der Grosse Brockhaus," a twelve volume, widely-used German language encyclopedic dictionary. The excerpt is a definition of the German word "Handelsvertretung."

3. German is my native language. I speak and read it fluently. I also speak and read English fluently, having studied the language for many years and having attended law school in the United States.

4. I certify that the translation I have made,

a copy of which is attached hereto, is complete and accurate. A copy of the page from "Der Grosse Brockhaus" which contains the excerpt translated is also attached hereto.

5. The most accurate idiomatic English equivalent of the German term "Handelsvertretung" is "Trade Consulate" or "Trade Mission."

J. H. Wille

Johann Wille

Sworn to before me this
5th day of December, 1975.

Mary O'Donnell

MARY O'DONNELL
Notary Public, State of New York
Qualified in Bronx County
No. 03-2942525
Certificate filed in N. Y. Co.
Commission expires March 30, 1977

[3]

Translation from the German encyclopedic dictionary "Der Grosse Brockhaus", volume 5 (1954), p. 241, caption "Handelsvertretung":

Foreign offices of countries with foreign trade monopoly for establishment and accomplishment of the commerical intercourse, sometimes established before the taking up of diplomatic relations. The "Handelsvertretung" and its members enjoy diplomatic privileges only in case of express contractual agreement and have to abstain from political activity.

131a
[4]

# DER GROSSE BROCKHAUS

SECHZEHNTE, VÖLLIG NEUBEARBEITETE AUFLAGE
IN ZWÖLF BÄNDEN

Fünfter Band

Gp – Iz

F. A. BROCKHAUS WIESBADEN
1954

**Handelsvertretung,** ausländ. Dienststellen von Staaten mit →Außenhandelsmonopol zur Anknüpfung und Durchführung des Handelsverkehrs, zuweilen vor Aufnahme der diplomat. Beziehungen errichtet. Die H. und ihre Mitglieder genießen diplomat. Vorrechte nur bei ausdrücklicher vertragl. Vereinbarung und haben sich polit. Tätigkeit zu enthalten.

H. SCHENK VON STAUFFENBERG: Die Rechtsstellung d. russ. H. (1930); KUHN in: American Journal of Internat. Law (1945).

**Handelsware,** das →Handelsgut.

**Handelswechsel, Warenwechsel,** ein →Wechsel, dem ein Handelsgeschäft zugrunde liegt.

**Handelswert, Verkehrswert, gemeiner Wert,** der im Handelsverkehr zu erzielende Durchschnittspreis (Marktpreis). Der gemeine H. bestimmt die Höhe der Haftung, falls ein Gut beim Verfrachten verlorengeht (§ 430 HGB).

**Handelszeichen, Handelsmarke,** ein →Warenzeichen, dessen sich ein Handler für die von ihm in Verkehr gebrachte Ware bedient, im Unterschied zur Fabrikmarke (Fabrikzeichen), dem Warenzeichen des Herstellers. Ein rechtl. Unterschied zwischen H. u. Fabrikzeichen besteht nicht.

**Handelszeitung,** →Wirtschaftszeitung.

**Händelwurz,** Händchenwurz, mehrere europ. Orchideen mit handförmigen Knollen, z. B. →Gymnadenie.

**Handfertigkeitsunterricht, Handtätigkeit,** die bastelnde, werkliche, manuelle Tätigkeit im Anschauungsunterricht und in der Kunsterziehung der allgemeinbildenden Schulen, grundsätzlich bes. für die Grund- und Volksschule und die Unterstufe der weiterführenden Anstalten gefordert. Einen breiten Raum nimmt der H. in den →Sonderschulen ein. Die Mädchenschulen haben Handarbeitsunterricht. Vom H. unterscheidet sich der →Werkunterricht durch die bündige Arbeit am Werkstück in Schülerwerkstätten.

**Handfeste,** 1) ursprünglich eine Urkunde, die vom Aussteller unterzeichnet oder durch Handauflegung gefestigt wurde (lat. *cartam manu firmare*, davon die Bezeichnung ‚Firma').

2) im MA. vielfach das vom Stadtherrn einer Stadt verliehene Privileg.

**Handfeuerlöscher,** →Feuerlöschapparate.

**Handfeuerwaffen,** Feuerwaffen, die, im Unterschied zum Geschütz, von einem Mann getragen und mit der Hand bedient und abgefeuert werden. Der Schütze selbst nimmt alle Handlungen vor, die das Zubringen, Laden und Entzünden der Patronen sowie das Entladen der Waffe erfordert. Zu den H. gehören die Gewehre und Karabiner, ferner die →Pistolen (Browning-Pistolen) und →Revolver (*Faustfeuerwaffen*). Die Hauptteile der H. sind Lauf, Visiereinrichtung, Verschluß (Schloß), Abzugsvorrichtung, Schaft (Gewehr, Karabiner) oder Griffstück (Pistole, Revolver), Handschutz, Stock, Beschläge (→Panzerabwehr).

Geschichte. Die Entwicklung der H. zeigt zwei Haupttypen: die *Vorderlader* (vom 14. Jahrh. bis zur Mitte des 19. Jahrh.) und die *Hinterlader* (von der Mitte des 19. Jahrh. bis zur Gegenwart), die sich wiederum aufgliedern in die *Einzellader* und die *Mehrlader* (seit dem letzten Drittel des 19. Jahrh.). Weiter vollzog sich um die Mitte des 19. Jahrh. der Übergang von den glatten zu den gezogenen H. (→Zug).

Die ältesten, im ersten Drittel des 14. Jahrh. auftretenden H. waren *Handbüchsen*, einfache, aus Bronze gegossene oder aus Eisen geschmiedete Rohre mit oben eingebohrtem Zündloch, hinten mit einem kürzeren (Faustrohr) oder längeren Stiel (Stielbüchse) versehen. Zum Lösen des Schusses dienten ein glühender Draht oder eine brennende →Lunte. Das in der 1. Hälfte des 15. Jahrh. aufkommende *Luntengewehr* (Luntenschloßmuskete) hatte ein auf der rechten Seite des Laufes liegendes Zündloch mit vorgelagerter, verschließbarer Pfanne, drehbar gelagertem *Hahn* zum Einklemmen der Lunte mit Feder und Abzug, alles am Schloßblech vereinigt, es blieb bis zum Beginn des 18. Jahrh. im Gebrauch. Bei dem zu Beginn des 16. Jahrh. in Dtl. erfundenen *Radschloß* lag an der rechten Seite des Schloßbleches ein stählernes Rad mit aufgerauhtem Rand, dem ein durch den Hahn gehaltenes Stück Schwefelkies unmittelbar auflag. Beim Laden wurde das mit einer Feder in Verbindung stehende Rad mit einem Schlüssel aufgezogen; beim Lösen des Abzuges erzeugte das Rad durch schnelle Drehung den Funken (→Arkebuse). Eine andere, gleichzeitige Konstruktion ist das aus Spanien stammende *Schnappschloß*, bei dem der Funke nicht gerissen, sondern geschlagen wurde. In der 1. Hälfte des 17. Jahrh. entwickelte man in Frankreich das *Batterie-, Stein-* oder *Pulverschloß* (feuerschlagend nach dem Prinzip des Feuerzeuges unter Verwendung von Flint- oder Feuerstein). Das als Jagd- wie als Militärwaffe verbreitete Steinschloßgewehr blieb trotz des Versagens bei Regenwetter, der geringen Lebensdauer der Feuersteine (30–50 Schuß) rund 200 Jahre im Gebrauch: sowohl in den Kriegen Friedrichs d. Gr. wie den Revolutions- und Freiheitskriegen (Feuergeschwindigkeit: 2–3 Schuß/min, Schußweite: 150–225 m, geringe Treffleistung im Einzelschuß, glatter Lauf). Doch hatten die Jäger- (Scharfschützen-) Bataillone bereits seit dem 18. Jahrh. gezogene →Büchsen.

Den Abschluß in der Entwicklung des Vorderladers bildet das im 1. Drittel des 19. Jahrh. aufkommende, auf dem Prinzip der chemischen Zündung beruhende *Perkussionssystem* (1799 Erfindung des Knallquecksilbers, 1818 des Zündhütchens). Am hinteren Ende des Gewehrlaufes befand sich ein kleiner Ansatz, in den das Piston (Röhrchen, auf dem das Zündhütchen sitzt) eingeschraubt wurde; beim Lösen des Abzuges entzündete der Hahn durch Schlag den Knallquecksilbersatz des Zündhütchens. Diese Art der Zündung wirkte auch bei Sturm- und Regenwetter. Gleichzeitig erzielte man ballistische Leistungssteigerungen durch Einführung der Züge, Verwendung des Flußstahls und des Langgeschosses an Stelle der bisherigen Kugel sowie Anwendung des Prinzips der Stauchung (DELVIGNE 1827, THOUVENIN 1844) oder Expansion (MINIÉ 1849, NESSLER, PLOENNIES). Die Schußweiten stiegen auf 1000 Schritt, der gezielte Einzelschuß auf größere Entfernung wurde möglich. Die Bewährung dieser verbesserten Perkussionsgewehre im Krimkrieg (1854–56) auf französ.-brit. Seite zwang alsbald alle Staaten, die glatten Vorderlader mit gezogenen Gewehren zu vertauschen.

Das 1836 durch J. N. VON DREYSE erfundene, 1840 bei der preuß. Armee zunächst unter dem Decknamen ‚leichtes Perkussionsgewehr M 41' eingeführte →Zündnadelgewehr ist der erste kriegsbrauchbare Hinterlader und zugleich das Ausgangsmodell aller modernen Gewehre. Es erlaubte ein vereinfachtes, in jeder Körperlage mögliches Laden und damit eine Steigerung der Feuergeschwindigkeit um das Dreifache (bei guter Ausbildung 5–6 Schuß/min). In den Kriegen von 1864 und 1866 erwies sich die Überlegenheit des Zündnadelgewehrs. Soweit man nicht von vornherein das preuß. Modell in mehr oder weniger getreuer Nachbildung übernahm (Frankreich, Rußland, Italien), wurden in den Jahren 1866–71 die vorhandenen Perkussions-Vorderlader in Hinterlader (Österreich, England, Spanien, Schweiz) umgeändert. In Frankreich führte man 1866 bis das *Chassepotgewehr* ein, das im Deutsch-Französ. Kriege von 1870/71 dem Zündnadelgewehr noch überlegen war. Bis 1870 entstanden allgemein neue Modelle mit kleinem Kaliber, gesteigerter Schußweite und unter Verwendung der 1860 erfundenen Metallpatrone, die erst den Verschluß des Hinterladers völlig gasdicht machte. Zu den führenden neuen Konstruktionen zählte das von den Gebr. MAUSER geschaffene *Deutsche Reichsgewehr M 71* ein Selbstspanner mit schraubenförmigem Ineinandergreifen zweier schräger Flächen bei öffnender Drehbewegung und Flügelsicherung, weiter vervollkommnetem Zylindersystem und Schlagbolzenzündung.

Alle diese Gewehre waren Einzellader. Inzwischen hatte man es versucht, eine H. zu bauen, aus der man mehrere Schüsse hintereinander abgeben konnte, ohne



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**TRANSCRIPT OF HEARING DECEMBER 8, 1975**
**(pp. 133a-147a)**



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - x

GEORGE STROGANOFF-SCHERBATOFF, :

Plaintiff, :

-against- : 74 Civ 5750

CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN, :

Defendants. :

- - - - - - - - - - - - - - - - - - - - x

Before:

HON. DUDLEY B. BONSAL,

District Judge

New York, N. Y.
December 8, 1975 - 10:30 a.m.

APPEARANCES:

LYMAN STANSKY, ESQ.
Attorney for Plaintiff

Messrs. DAVIS, POLK & WARDWELL
Attorneys for Defendants
BY: TAGGART WHIPPLE, ESQ., of Counsel

lz

(Case called.)

THE COURT: All right, Mr. Whipple, this motion is for summary judgment. Go ahead.

MR. WHIPPLE: I hate to burden you with the law because the law is quite clear, it seems to me.

The only question raised by the plaintiff is this: He claims that this particular bust was not appropriated by the Soviet Government in Russia.

THE COURT: Is that because the owner of the bust was in Paris?

MR. WHIPPLE: Well --

THE COURT: I remember that coming up in connection with one of these.

Is that right, this bust you say was not appropriated in Russia?

MR. STANSKY: It was appropriated, if at all, in Berlin. It was sold by the Handelsvertretung. That is the name they have in one of their exhibits as the seller in Berlin.

MR. WHIPPLE: Your Honor --

MR. STANSKY: Berlin was not any part of Russia.

THE COURT: This was the auction in 1931, the same auction I have been hearing about? As I recall it, there were certain things that came out of the Hermitage that were sold

lz [3]

at auction. You say here the seller was not anybody from Russia. You say -- who was it?

MR. STANSKY: The Handelsvertretung, according to their Exhibit G, I think. The catalog, the frontispiece of the catalog. The Handelsvertretung, and there is a question of semantics, the translation of that word. I have translated it in my papers as "Trade Commission." They say it is --

MR. WHIPPLE: Let me correct Mr. Stansky. It is translated as "Commercial Representation" and Mr. Stansky implies for some reason this is like the United States Chamber of Commerce.

We have submitted to your Honor and given to Mr. Stansky a copy of the definition of Handelsvertretung from the leading German encyclopedic dictionary where it is defined not as "Commercial Representation," not as any kind of a quasi-private organization but, and I quote, "Foreign offices of countries with foreign trade monopoly for the establishment and accomplishment of the commercial intercourse."

Our translator states that the nearest idiomatic equivalent of the German term is "Trade Consulate" or "Trade Mission."

I would like to hand your Honor a copy and Mr. Stansky a copy of some 1918 materials of the Soviet system, the first

of which makes it perfectly clear that in the exercise of the pervasive power that the Soviet Union brought to bear on everything within its borders in 1918, it established and nationalized a monopoly in foreign trade. I refer to the first document entitled --

THE COURT: Your point is that this was an agency of some kind?

MR. WHIPPLE: No doubt about it, your Honor. The excerpt we have from the Herald Tribune in 1931 twice states this sale in Berlin was carried on by order of the Soviet Government.

We have also submitted materials, and I have a copy of the 1923 Constitution here -- the two Constitutions I'm told together that I just handed you -- and it makes it perfectly plain that the agencies referred to in the 1923 decree, which is our Exhibit G, are indeed agencies of the Soviet Government. It is impossible to read the 1918 Constitution, speaking as it does of the Central Executive Committee which is mentioned in our Exhibit G, it is impossible to read this without recognizing the enormous, the rather terrifying power that the Soviet Government exercised in 1918 and again in 1923.

It is perfectly plain that the 1923 decree, which is attached as our Exhibit G, the decree of the All-Russian

Central Executive Committee, whose powers are defined in detail in the 1918 and 1923 Constitutions, and the Council of the Peoples Commisars are indeed government agencies.

It is perfectly clear that the State Museums were taken over by the government and finally, if there is any doubt as to the terms of these Soviet decrees, your Honor, it is laid at rest by the decision of the British Court of Appeal in 1929, in a case that is surprisingly close to ours, Princess Paley Olga v. Weisz and Others.

There were three bases for the opinion of the Court of Appeal. The first was that the decree of 1923, our Exhibit G, stated in Section 5: "Works of art, antiques, and articles of historical interest being in museums and depositories, as forming part of the Museum Fund and being safeguarded by State means, are recognised to be State property."

Construing that statute, the Court of Appeal agreed with the judge below in this language: "Being the property of the Russian State, the Russian Government has sold them, and I," says the judge speaking for the Court of Appeal, "can find nothing in the Russian Decrees enabling their former owner to complain in these or any courts of the sale by the Russian Government."

Secondly, the Court of Appeal dealt with that statute which talks about people fleeing from Russia. We don't make

any great point about the man fleeing from Russia. Here he says he wasn't in Russia at the time, all right.

There is a third defense which the court below, before the case got to the Kings Bench, rejected and that was the defense of the Act of State, and the court there, the British court quotes from the United States Supreme Court's language in Oetjen v. Central Leather Company, going back and quoting the old Underhill case in 1897: "Every sovereign state is bound to respect the independence of every other foreign state and the courts of one country will not sit in judgment on the acts of another done within its own territory."

For this reason also, says the Kings Bench, the claim of the plaintiff fails.

I submit to your Honor it is perfectly clear we are talking about an Act of State. It is clear from the materials I handed you. It is clear from the provisions in this 1923 decree construed by the Kings Bench Division.

It is perfectly clear that this Handelsvertretung is not a quasi-public organization. There can't be any doubt about the Act of State.

That being so, your Honor, I think that the plaintiff's complaint here lies not through the courts of this country against us but rather it lies against the Russian Government.

I see nothing in his papers whatever and in the

arguments he has tried to make that gets away from that pervasive overriding Act of State.

THE COURT: It is interesting about these materials about the Soviet system. I knew Edward Kozera very well. He was a Pole and he did work for Radio Free Europe. I knew him while he lived in Holland. He was a very nice man that died at St. Lukes Hospital about seven years ago. I just wanted to mention that.

What do you have to say about this Act of State, Mr. Stansky?

MR. STANSKY: I have nothing to say except it is a waste of time to discuss it because the law is perfectly clear and I don't dispute the validity of that law. What is fascinating -- there is no use in erecting a straw man who says the Act of State applies and saying that is the law. I know it is the law, but to say it is perfectly clear that all these institutions are governmental is something they haven't proved. The burden of proving the special defense is on the defendant. It isn't up to the plaintiff to disprove their special defense. They have the burden.

How have they sustained the burden? Interestingly enough, Mr. Whipple cites the Olga case. Well, the facts of that case, and we don't have anything to do with that case, we don't say it is bad law at all.

The facts are the articles were purchased in Russia from the Russian Government. That was proved, that was admitted.

It was also proved and admitted that she was a fugitive and therefore, that particular statute didn't apply to her, that we claimed in earlier stages in this litigation applied to this plaintiff and to his predecessors in title.

THE COURT: Was this lady in Paris?

MR. STANSKY: No. She was in Russia. She was in Russia at the time living in her house and Weisz, the English dealer and other people came there to Russia. The government had taken over the contents.

You see, there is no problem about the taking over by the government of the real estate, which was very extensive and very important, but of the contents, and there is where we get into areas of factual problems.

However, to get back to Olga, Olga was living there. The government sold the stuff right in Russia and the Englishman took them to England. She escaped as a fugitive after that, after 1919, and when she found herself in London and she found these things, she sued the people who bought them.

Well, here the big problem is did the government take these things over? They say the government did. What is their proof?

I was in Russia in 1959. I was given a paper, I was given this little pamphlet by one of the members of the Supreme Court in her chambers -- the only female member at the time -- and I was told this was a Constitution.

I have read the report of what is the Constitution by Professor John Hazard of Columbia in Martindale Hubbel. I have seen no reference to the powers -- to the creation, the powers or other things of this Handelsvertretung, of the Peoples Museum Fund, of the Peoples Executive Committee, and so on. They may very well be government agencies. They may have had the power to seize these things. They may have had the power, after seizing them, to send them to Berlin for sale.

Their Exhibit G says that government agencies are forbidden to sell art objects. They cite that themselves in Exhibit G, I believe it is. They haven't shown when that prohibition against the selling of art objects abroad was rescinded, by what decree and what year.

We know that this Diderot -- we are now concerned with Diderot, a bust by Houdon of Diderot. This was sold in Berlin. We don't know to whom. We don't know who bought it. We don't know how the Wrightsmans got it because although we had depositions to be taken of Wrightsman when he came back last October, instead of that I got served with this and so

[10]

I had to channel my energies in the direction of meeting this assault on my client's case. So we didn't set a date for Wrightsman's examination. They missed their opportunity of presenting an affidavit by Wrightsman or his wife. Where did he get it? Did he buy it in Russia and then was transferred to Berlin and he just picked it up there from Lepke, the auctioneer? Did he buy it from somebody who bought it --

THE COURT: Was it listed in this catalog?

MR. STANSKY: Yes, sir.

And what kind of a bill of sale did he get? Did he get a warranty of title? If so, from whom? Was it a government warranty, USSR Government warranty?

They missed their opportunity of showing that to the court, that might have just knocked this case on its head. Why they didn't use that opportunity I don't know since Wrightsman came back to America in October. However, that is their problem. I can't solve all the problems of the world.

So what they have presented this court are suspicions that these organizations -- and Friday afternoon at half past -- I mean a quarter of three when I was absent, I didn't return until half past four from court, they served papers on me.

What are these papers they served? A chap who says

he knows the German language says Handelsvertretung, and that's the organization that sold in Berlin, which I said is Commercial Representative, they say is translated in a dictionary, a German dictionary, foreign offices of countries with foreign trade monopoly for establishment and accomplishment of commercial intercourse, sometimes established before the taking up of diplomatic relations. The Handelsvertretung and its members enjoy diplomatic privileges only in case of express contractual agreement.

Well, they want to translate it that way, fine, but that doesn't prove it is a government agency with the powers to sell in Berlin property already appropriated and confiscated in Berlin and now this morning I have been sitting here since twenty after nine, they serve me with this and they say this contains, this shows that these agencies, commissions and other things they name in their Exhibits A to G are government agencies with power to do these things. Maybe it does, but I really haven't had a chance --

THE COURT: Supposing I give you a week to put in any paper you want to put in.

MR. STANSKY: I would appreciate that. Would ten days be inconsistent?

THE COURT: Without objection, ten days.

MR. WHIPPLE: Not at all, your Honor.

[12]

THE COURT: I will give you until a week from Friday.

MR. WHIPPLE: Could we have a few days to reply if we want to?

THE COURT: No. I think I will give him ten days to put in anything he wants. If I want anything more, I will let you know.

MR. STANSKY: Does your Honor want to hear me a little longer --

THE COURT: I would like to hear you but I have a great many other matters on this morning, unfortunately. So that I would like to but I think I will have to read your papers. I will have to read these things. I will give you an opportunity to reply, Mr. Stansky. Then I think I will be in a better position to decide what to do.

MR. STANSKY: Your Honor understands, I hope I have made it clear, I don't quarrel --

THE COURT: You don't quarrel with Mr. Whipple's views on the State doctrine. You say it doesn't apply here because you say he has the burden here of showing that these people were government agencies.

MR. STANSKY: That's hornbook law, isn't it?

THE COURT: Nothing is hornbook law to me. I have been on this court too long to go in for hornbook law.

MR. STANSKY: It always sounded impressive to me.

MR. WHIPPLE: May I just respond briefly? I will put it in the record for your Honor's benefit and Mr. Stansky's.

The fundamental point we are making is to demonstrate that this is factually a taking by the government.

In the first place, if you look at our Exhibit C, which is a brief guide to the Stroganoff Palace-Museum printed in Petersburg in 1922, it is headed State Museum Fund and it is published on the instructions of State Museum Fund, and the first sentence said: "In September 1919 the scholarly staff of the picture gallery of the State Hermitage, following the suggestion of the Section of Museums and Safeguarding of monuments of art and antiquity, proceeded to install a museum in the Stroganov palace."

Our Exhibit G is a decree of the All-Russian Central Executive Committee and of the Council of Peoples Commisars, and it states that these two bodies passed the decree:

"1. In order to single out objects of exceptional museum importance and subject to the preservation by the State, to conduct the reregistration of the collections and single monuments of art and antiquity..."

This is to be done by the Peoples Commissariat of Education in charge of the Museum Section. That was the term used in the 1922 catalog of the Peoples Commissariat of Education.

It then goes on in Paragraph 4 and says:

"Collections and single monuments of art," so on and so forth, "left on the inventory of the Museum Section are under the control of the State."

It goes on and says that objects of art which are in museums "...as having become a part of the museum collections, and safeguarded by State means, are recognized as the property of the State." The term "Museum Section" appears throughout.

As to the All-Russian Central Executive Committee of Soviets who promulgated that decree, the 1918 Constitution in Section 12 says "Supreme authority in the Russian Socialist Federal Soviet Republic is vested in the All-Russian Congress of Soviets and, during the period between the Congresses, in the All-Russian Central Executive Committee of Soviets," which promulgated the 1923 decree.

That was the taking, if there is any doubt about it, in 1918 to 1923, not in Berlin at the time of the sale.

Now I refer the Court also, backing up what I have to say about this to Chapter 7 of the 1918 Constitution, which defines the All-Russian Central Executive Committee as the "...supreme legislative, administrative, and controlling body of the Russian Socialist Federal Soviet Republic"; to Paragraph 35 on Page 83; to Paragraph 43; to Paragraph 49.

I am now adverting to the 1918 Constitution. Also in

the 1923 Constitution, lest there be any doubt about the pervasive power of the Central Executive Committee of the Union, I would refer the Court to Chapter IV, Article 17, Article 19. These are all papers that I have handed the Court. Chapter VI, Article 37 and Article 67, all of the 1923 Constitution, and I submit that when Mr. Stansky looks at these papers -- I suspect he knows about them anyway -- and when the Court studies them, there is no escaping from the proposition that this was, in fact, a State taking, demonstrated and backed up by the materials I handed the Court today.

THE COURT: Okay.

MR. STANSKY: Counsel's last remarks compels me to say Timeo Danaos et dona ferentes.

May I have the Court's permission to correct some typographical errors in the affidavit? The English is bad in one instance and I don't like it.

THE COURT: All right. Tell Mr. Whipple what you are doing.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

GEORGE STROGANOFF-SCHERBATOFF, :

Plaintiff, :

-against- : Civil Action No. 74 Civ. 5750 (DNE)

CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN, :

Defendants. : AFFIDAVIT

- - - - - - - - - - - - - - - - - - x

STATE OF FLORIDA )
: ss.:
COUNTY OF PALM BEACH)

CHARLES B. WRIGHSTMAN, being duly sworn, says:

1. I am a defendant in the above captioned action.

2. I acquired the bust of Diderot, which is the subject to this lawsuit, from French & Company, Inc., art dealers, 978 Madison Avenue, New York, New York, on or about June 5, 1965, for the sum of $48,000.

3. I gave the Diderot bust to the Metropolitan Museum of Art on or about November 14, 1974, prior to the initiation of this lawsuit.

/s/
Charles B. Wrightsman

Sworn to before me this
5th day of February, 1976.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Copy Received
MAY 24 1976
LYMAN STANSKY
ATTY. FOR

GEORGE STROGANOFF-SCHERBATOFF,

Plaintiff,

-against-

HENRY H. WELDON,

Defendant.

74 Civ. 626

MEMORANDUM

GEORGE STROGANOFF-SCHERBATOFF,

Plaintiff,

-against-

CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN,

Defendants.

74 Civ. 5750

LYMAN STANSKY, ESQ.
667 Madison Avenue, New York, N.Y. 10021
Attorney for Plaintiff

THAL & YOUTT, ESQS.
666 Fifth Avenue, New York, N.Y. 10019
Attorneys for Defendant Weldon
By HARRY E. YOUTT, ESQ.

DAVIS POLK & WARDWELL, ESQS.
1 Chase Manhattan Plaza, New York, N.Y. 10005
Attorneys for Defendants Wrightsman
TAGGART WHIPPLE, ESQ.
ARTHUR F. GOLDEN, ESQ.
BETTY J. PEARCE, ESQ.
Of Counsel

BONSAL, D. J.

Plaintiff George Stroganoff-Scherbatoff commenced these actions alleging conversion of certain works of art by defendants

Henry H. Weldon, Charles B. Wrightsman and Jayne Wrightsman. Specifically, in a complaint filed February 6, 1974, plaintiff alleged that Henry H. Weldon "converted to his own use a painting known as Portrait of Antoine Triest, Bishop of Ghent, ["Triest Portrait"], by Sir Anthony Van Dyck, of the value of $50,000, the property of plaintiff." Then, in another complaint filed December 31, 1974, plaintiff alleged that Charles B. Wrightsman and Jayne Wrightsman converted to their own use a bust of Diderot by Houdon, described in Catalogue 2043 of Rudolph Lepke's Kunst-Auctions-Hause, No. 225 with a property value of $350,000. A subsequent suit, 75 Civ. 3174, was brought against the Metropolitan Museum of Art, the present owner of the Diderot bust, which was subsequently consolidated with the Wrightsman case by Court order dated September 30, 1975.[1/]

Defendants now move pursuant to Fed. R. Civ. P. 56(b) for summary judgment in their favor. In support of his motion, defendant Weldon has submitted his own affidavit; the affidavit of his attorney, Harry H. Youtt, Esq.; the affidavit of Robert L. Manning, the Director-Curator of the Finch College Museum of Art; portions of the "Sammlung Stroganoff" or auction catalogue prepared for the auction in Berlin, May 12-13, 1931; and portions of the Catalogue de la Galerie des Tableaux of the Imperial Hermitage, St. Petersburg, Russia.

Defendants Wrightsman have submitted an affidavit by their attorney, Betty J. Pearce, Esq.; several documents including "The Stroganoff Palace-Museum - A Brief Guide, St. Petersburg, 1922";

excerpts from the "Sammlung Stroganoff"; decrees of the All Russian Central Executive Committee and of the Council of People's Commissars; "Eighteenth Century French Art in the Stroganov Collection"; affidavits of the translators of these documents; documents on Soviet law and the Soviet Constitution; and the affidavit of Charles B. Wrightsman.

In opposition to these motions, plaintiff has submitted his own affidavit and a supplemental affidavit of his attorney, Lyman Stansky, Esq.

Before deciding these motions for summary judgment, the Court, in a Memorandum to Counsel, gave the parties "... an opportunity to submit further briefs on the Act of State and Statute of Limitations points in light of Princess Paley Olga v. Weisz, [1929] 1 K.B. 718; Menzel v. List, 22 App Div.2d 647, 253 N.Y.S.2d 43 (1964); and Menzel v. List, 49 Misc.2d 300, 267 N.Y.S.2d 804 (1966)." Supplemental memoranda of law and additional affidavits were subsequently filed by all parties.

It appears undisputed that both the Triest Portrait and the Diderot bust were sold in Berlin in 1931 at the Lepke Kunst-Auctions-Hause (hereinafter "Lepke Auction") by order of the Handelsvertretung or Trade Consulate of the U.S.S.R.[2/] The Triest Portrait was purchased by the Frank T. Sabin Gallery in London which later sold it to the Alfred Brod Gallery, Ltd. in London. In 1963, defendant Weldon acquired the painting from the Brod Gallery and remains the present owner. It is unclear from the record who purchased the Diderot bust at the Lepke Auction; however, Charles B. Wrightsman later acquired the bust in June, 1965 from French & Company, Inc.,

a New York art dealer, and later donated it to the Metropolitan Museum of Art on or about November 14, 1974.

Plaintiff alleges that he is the direct descendant of Count Alexander Sergevitch Stroganoff, the original owner of both works of art, and that he is the rightful owner of these works of art by reason of familial succession. Plaintiff contends that the auction catalogue for the Lepke Auction described these works as part of the Stroganoff Collection. ("Sammlung Stroganoff".)

Defendant Weldon contends that the auction catalogue does not support plaintiff's contentions that the Triest Portrait was part of the Stroganoff Collection. Rather, Weldon contends that the Portrait was part of the collection of the Imperial Hermitage Museum in St. Petersburg, Russia.[3/] Moreover, defendant Weldon contends that even if plaintiff can prove ownership of the painting by familial succession, the Court is barred from granting any relief by reason of the Act of State Doctrine.

Defendants Wrightsman also contend that the Act of State Doctrine bars any relief.

## The Act of State Doctrine

The Act of State Doctrine requires courts of this country to refrain from independent examination of the validity of a taking of property by a sovereign state where 1) the foreign government is recognized by the United States at the time of the lawsuit, and 2) the taking of the property by the foreign sovereign occurred within its own territorial boundaries.

In Underhill v. Hernandez, 168 U.S. 250 (1897), plaintiff brought suit against the defendant, the commander of a revolutionary army in Venezuela, for damages caused by defendant's refusal to issue a passport and for alleged assaults and affronts by defendant's soldiers in Venezuela. Since the United States had recognized the defendant's revolutionary government as the legitimate government of Venezuela, the Court held:

> "Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." Id. at 252.

Then, in Oetjen v. Central Leather Co., 246 U.S. 297 (1918), hides were seized in Mexico from a Mexican citizen by General Villa, acting on behalf of General Carranza, and were sold in Mexico to a Texas corporation which shipped them to the United States where they were sold to defendant. Plaintiff claimed title to the hides as assignee of the Mexican citizen. Taking note of the fact that the United States had recognized the Government of Carranza as the de facto government of Mexico in 1915, and as the de jure government in 1917, the Court denied plaintiff's request for relief and held:

> "Plainly this was the action, in Mexico, of the legitimate Mexican government when dealing with a Mexican citizen, and, as we have seen, for the soundest reasons, and upon repeated decisions of this court such action is not subject to reexamination and modification by the courts of this country." Id. at 303.

The Act of State Doctrine was again applied in Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964), a case involving

the expropriation by the Cuban Government of property located in Cuba but owned principally by American nationals. There, the Court held:

> "... the Judicial Branch will not examine the validity of a taking of property within its own territory by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or other unambiguous agreement regarding controlling legal principles, even if the complaint alleges that the taking violates customary international law." Id. at 428.

Here, the record shows that the works of art, whether in the Stroganoff Palace or in the Imperial Hermitage Museum, were appropriated by the Soviet Government under either Decree No. 111 of the Council of People's Commissars published on March 5, 1921, which nationalized all movable property of citizens who had fled the Soviet Union,[4/] or Decree No. 245 of March 8, 1923, promulgated by the All Russian Central Executive Committee and the Council of People's Commissars, which nationalized property housed in State Museums. In addition, at the time of the Lepke Auction in Berlin, plaintiff's mother, Princess Stroganoff-Scherbatoff, wrote a public letter of protest stating that:

> "This collection remains entirely my property. The Soviet republic has taken possession of this collection in a way that sets at defiance every principle of international law." (Emphasis added.)
> New York Herald Tribune, May 13, 1931, at 15.

While plaintiff contends that the "taking" did not occur within the territory of the Soviet Union but in Berlin at the Lepke Auction and, under such circumstances, the Act of State Doctrine is

inapplicable, the record indicates that the works of art were appropriated in Russia, prior to the Lepke Auction, and were transported to Berlin by the Soviet Government solely for the purpose of the public sale.

In Princess Paley Olga v. Weisz, [1929] 1 K.B. 718, the British Court of Appeal was faced with a case involving similar facts. There, a Russian refugee noble, Princess Paley Olga, instituted an action in the British courts to recover certain furniture and art objects that had been in the Paley Palace, near St. Petersburg, and which were sold by the Soviet Government to the defendant in 1928. Relying in part on Decree No. 111 of the Council of People's Commissars published on March 5, 1921, and Decree No. 245 promulgated by the All Russian Central Executive Committee and of the Council of People's Commissars in March 1923, the defendant Weisz contended that the articles in question had ceased to be the property of the plaintiff and were in the possession of the Soviet Government as public property. Since that Government was the Government of a foreign sovereign State, and had been recognized as such by the English Government in 1924, defendant contended that the plaintiff could not dispute the validity of the appropriation of the articles by the Soviet Government in the British courts. In affirming the lower court's decision that plaintiff's action must fail, the Court of Appeal (Scrutton, L.J.) held:

> "Our Government has recognized the present Russian Government as the de jure Government of Russia, and our Courts are bound to give effect to the laws and acts of that Government so far as they relate to property within that jurisdiction when it was affected by those laws and acts." Id. at 725.

Here it appears that the Triest Portrait and the Diderot bust were transported to Berlin for public sale in May 1931 at the direction of the Soviet Government. The Soviet Government had been recognized by the United States as the de jure government of Russia in 1933. Whether the works of art had been appropriated under Decree No. 111 of March 5, 1921 or Decree No. 245 of March 8, 1923 appears to be immaterial. The sale of the Stroganoff Collection was held by order of the Handelsvertretung and as such was carried out under the direction and with the consent of the Soviet Government. While the actual sale of the works of art occurred in Berlin, the property had been seized in Russia by the Soviet Government.

Unlike the situation in Menzel v. List, 49 Misc.2d 300, 267 N.Y.S.2d 804 (1966), where the taking was by an organ of the Nazi Party, not a sovereign state, and the Act of State Doctrine was held inapplicable, here, the Soviet Government, by official decrees of its political organs, had acquired the works of art in Russia prior to their public sale in Berlin in 1931. Moreover, in Manzel v. List, the appropriation of the painting was in Belgium and the Government of the Kingdom of Belgium, although in exile at the time, was still the recognized government of Belgium. Here, the appropriation was by the Soviet Union and occurred within the territorial boundaries of the Soviet Union.

Thus, it seems clear that, on this record, plaintiff is precluded from recovery by reason of the Act of State Doctrine. Banco Nacional de Cuba v. Sabbatino, supra; see Princess Paley Olga v. Weisz, supra. In view of the foregoing, the Court does not

reach the statute of limitations issue. 5/

Accordingly, defendants' motions for summary judgment are granted.

It is so ordered.

Dated: New York, N.Y.
May 18, 1976

DUDLEY B. BONSAL

U. S. D. J.

Footnotes:

1/ On February 2, 1974, plaintiff commenced another action, 74 Civ. 625, alleging conversion by defendant Charles Wrightsman of a bust of Voltaire by Houdon. Subsequently, a suit was brought against the Metropolitan Museum of Art, 74 Civ. 3809, for the same cause of action. Both actions were consolidated for purposes of a joint trial by Order dated April 26, 1976.

2/ See affidavit of Johann Wille dated December 5, 1975.

3/ See affidavit of Robert L. Manning dated February 7, 1975, attached to defendant Weldon's Motion for Summary Judgment.

4/ Plaintiff denies that Count Alexander Sergevitch Stroganoff fled the Soviet Union in 1919 and thus disputes the applicability of Decree No. 111 of March 5, 1921 to the facts of this case.

5/ Plaintiff has brought these suits for conversion of works of art. Under the applicable New York statute, New York Civil Practice Law and Rules ("CPLR") §214(3) (McKinney 1972), "an action to recover a chattel or damages for the taking or detaining of a chattel ... must be commenced within three years." (Section 214(3) of the CPLR, effective September 1, 1963, replaced former Section 48(4) of the Civil Practice Act which provided a six-year statute of limitations.)

Moreover, under New York CPLR §206(a), a demand is necessary before a person is entitled to bring an action in conversion. That statute provides, in part:

(Footnotes continued)

"... where a demand is necessary to entitle a person to commence an action, the time within which the action must be commenced shall be computed from the time when the right to make the demand is complete."

Here, it would appear that the right of plaintiff's mother to make the demand was complete in 1931 when the works of art were sold at the Lepke Auction in Berlin. Under the New York statute of limitations, it would appear that the time for commencing an action in conversion had already run at the time of Princess Stroganoff-Scherbatoff's death in 1944.

JUDGMENT APPEALED FROM
FILED JUNE 1, 1976



BONSAL, J.

U.S.DISTRICT COURT
FILED
JUN 1 1976 D.P.
S. D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK,

GEORGE STROGANOFF-SCHERBATOFF
Plaintiff
-against-
HENRY H. WELDON
Defendant

74 Civil 626 (DBB)

JUDGMENT

GEORGE STROGANOFF-SCHERBATOFF
Plaintiff
-against-
CHARLES B. WRIGHTSMAN and
JAYNE WRIGHTSMAN
Defendants

74 Civil 5750 (DBB)

GEORGE STROGANOFF-SCHERBATOFF
Plaintiff
-against-
METROPOLITAN MUSEUM OF ART
Defendant

75 Civil 3174 (DBB)

Defendants in the above consolidated actions having moved the Court pursuant to Rule 56(b), of the Federal Rules of Civil Procedure, and the motions having come on to be heard before the Honorable Dudley B. Bonsal, United States District Judge, and the Court thereafter on May 18, 1976, having handed down its memorandum opinion granting the said motions, it is,

ORDERED, ADJUDGED and DECREED: That defendant HENRY H. WELDON have judgment against plaintiff GEORGE STROGANOFF-SCHERBATOFF, dismissing the complaint in 74 Civil 626, and it is further,

ORDERED, ADJUDGED and DECREED: That defendants CHARLES B. WRIGHTSMAN and JAYNE WRIGHTSMAN have judgment against plaintiff GEORGE STROGANOFF-SCHERBATOFF dismissing the complaint in 74 Civil 5750, and it is further,

ORDERED, ADJUDGED and DECREED: That defendant METROPOLITAN MUSEUM OF ART have judgment against plaintiff GEORGE STROGANOFF-SCHERBATOFF dismissing the complaint in 75 Civil 3174.

Dated: New York, N.Y.
June 1, 1976

RAYMOND F. BURGHARDT
Clerk

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 2nd day of July, one thousand nine hundred and seventy-six.

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George Stroganoff-Scherbatoff,
Plaintiff-Appellant,

v.

Henry H. Weldon,
Defendant-Appellee.

---

George Stroganoff-Scherbatoff,
Plaintiff-Appellant

v.

Charles B. Wrightsman & Jayne Wrightsman,
Defendants-Appellees.

---

George Stroganoff-Scherbatoff,
Plaintiff-Appellant,

v.

Metropolitan Museum of Art,
Defendant-Appellee.

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It is hereby ordered that the motion made herein by counsel for the appellant dated June 28, 1976 to consolidate the appeals in 74 Civ 626, 74 Civ 5750 and 75 Civ 3174 from the United States District Court for the Southern District of New York be and it hereby is granted.

William H. Mulligan

A 202 Affidavit of Personal Service of Papers
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

GEORGE STROGANOFF-SCHERBATOFF,

Plaintiff-Appellant,

- against -

HENRY H. WELDON,

Defendant-Appellee.

*Index No.*

*Affidavit of Personal Service*

*STATE OF NEW YORK, COUNTY OF* NEW YORK *ss.:*

*I,* Reuben A. Shearer *being duly sworn depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 211 West 144th Street, New York, New York 10030

*That on the* 21st *day of* October *19* 76 *at* 1. 25 Broadway New York, N.Y.
2. 919 Third Avenue New York, N.Y.
3. 1 Chase Manhattan Plaza New York, N.Y.

*deponent served the annexed* joint appendix *upon* 1. Lord, Day & Lord 2. Thal & Youtt 3. Davis, Polk & Wardwell

*the* attorneys *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,*

*Sworn to before me, this* 21st *day of* October *19* 76

Beth A. Hirsh

BETH A. HIRSH
NOTARY PUBLIC, State of New York
No. 41-4623156
Qualified in Queens County
Commission Expires March 30, 1978

Reuben Shearer

Reuben Shearer